



## **SOLID WASTE MANAGEMENT DIVISION**

**December 21, 2004**

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# **RESPONSIVENESS SUMMARY TO COMMENTS**

## ***ARKANSAS REGULATION 22***

Responsiveness Summary to Comments received from the Public Concerning Proposed Changes to Arkansas Regulation Number 22 as prepared for the Arkansas Pollution Control and Ecology Commission's pending rulemaking on Regulation 22, Solid Waste Management.



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**Mailing List – Responsive Summary to Comments*****Public Hearing @ Springdale, October 4, 2004*****Larry Karigan Winter**

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***Public Hearing @ Little Rock, October 6, 2004*****Northstar Engineering Consultants, Inc.**

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***Written Comments Received, October 20, 2004*****Waste Management**

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**Response to Comments**

<b>COMMENT ID:</b>	<b>GEC-1</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>  Add in definitions sections “Qualified Ground Water Scientist” A Professional Geologist Registered in the State of Arkansas  22.1201(f)...natural sciences, and is a Registered Professional Geologist in the State of Arkansas. A qualified groundwater scientist must .....					
<b>Response:</b>  The definition of “qualified ground water scientist“ has been expanded to include geologists. The definition has been strengthened by requiring any qualified groundwater scientist to be a Registered Professional in the state of Arkansas. The certifying professional must be able to demonstrate they have sufficient training in geology, geohydrology or ground water hydrology that enables the individual to make sound professional judgements regarding ground water monitoring. It is the opinion of ADEQ staff, restricting the qualified ground water scientists exclusively to Registered Professional Geologists is too restrictive. Geologists and engineers, provided they are Registered Professionals in the state of Arkansas may both be qualified to submit documents to the agency. However, ADEQ reserves the right to request supporting documentation from a Registered Professional to verify their qualifications to submit work as a “qualified ground water scientist. In addition, ADEQ reserves the right to submit any documents received by the agency to the Board of Registration for Professional Geologists for a determination on the certifying individual’s credentials to make “geologic interpretations” and the appropriateness of submitting documents to the agency as a “qualified ground water scientist. Therefore, the definition of qualified ground water scientist will not be restricted to just Registered Professional Geologists.					
<b>Notes:</b>					

<b>COMMENT ID:</b>	<b>GEC-2</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>  22.1203 (e) ....Background ground water quality is determined through the collection of at a minimum, four (4) independent samples from each well (background and downgradient). Remove the rest					
<b>Response:</b>  ADEQ agrees and will change eight (8) to four (4) independent samples. The remaining text will not be removed. In addition, recommended language for the first sentence is, ”The owner or operator must establish back ground water quality in “each” hydraulically upgradient, background or downgradient well”...					
<b>Notes:</b> “.....					

<b>COMMENT ID:</b>	<b>GEC-3</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1203 (h)(5) – No change, a facility should report values between the MDL and PQL but only utilize values reported above the PQL in the statistics. However, the PQL should be the lowest value utilizing current laboratory standards.					
<b>Response:</b>					
In 22.1203(h)(5) After the first sentence add a new sentence, “A facility should report values between the MDL and PQL but only utilize values reported above the PQL in the statistics. Modify the third sentence to read, “Any PQL or MDL that is used.....”, the rest of the paragraph stays the same.					
<b>Notes:</b>					

<b>COMMENT ID:</b>	<b>GEC-4</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1204 (b) .....and the post-closure period. Unless another sampling schedule has been approved by the Director, a minimum of four independent samples from each well ..... Comment Let the details of an individual facility be handled in the site sampling and analysis plan. If a facility needs to do quarterly monitoring, require it in the SAP, if they want to do more background sampling , let them put it in the SAP.					
<b>Response:</b>					
ADEQ agrees and recommends changing language in the sentence from eight (8) to four (4) quarterly samples.... ; Regarding the second part of the comment, the Regulation sets out a minimum required sampling frequency; The regulation allows the Director to approve an alternate sampling frequency for the facility, if deemed appropriate; therefore a facility , if they wish, has the option to propose an alternate frequency for establishing background in their Sampling and Analysis Plan (SAP); if the frequency requested in the SAP is appropriate for the given site, then the proposed sampling frequency may be approved by the SWMD.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GEC-5</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1205 (b) ...a minimum of four independent samples.....					

**Response:**

ADEQ agrees and will change eight (8) to four (4) independent samples.

**Notes**

<b>COMMENT ID:</b>	<b>AEF-1</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>  <p>While we understand the Department's desire to push this draft through to final rulemaking prior to the upcoming General Assembly, we have genuine concerns that this objective is running counter to quality rule-making. In good faith, the Department began this rule making as a negotiated approach to improving Regulation 22. However, several events have prevented the original intention during execution, 1) the loss of critical senior staff members during the process, 2) the lack of inclusion of the industrial community until later stages when significant changes had already been made, and 3) a piece-meal approach to later changes in the process. All of which has resulted in an on-again, off-again effort without continuity and inherent internal inconsistencies. This is especially true of the groundwater sections, the application section and closure/post closure sections. Regulation 22 is apparently revisited only once every ten years. So the opportunity to correct long-standing problems should be expected to be a lengthy process and not be short-changed by the pending Legislative Session. We strongly encourage the Department to "slow it down" and get it right.</p>				
<b>Response:</b>  <p>ADEQ initiated rewriting Regulation 22 well over a year ago. Multiple Public Meetings were held in various locations across the state to receive comments regarding proposed necessary changes to Regulation. Once the Draft Regulation 22 was completed additional comments were solicited.</p> <p>The regulated community has had every opportunity to discuss the proposed revisions with the ADEQ. We have met with AEF members, the AEF SW Committee, consultants and members of the regulated community several times and received and evaluated a tremendous number of comments regarding the proposed revisions. Every effort has been made to allow stakeholders to provide input. There have been staffing changes within the Division, However, more than one member of the SWMD was involved with drafting changes to Regulation 22 and those efforts have been successfully carried forward. There is no agency time table for periodically revising Regulation 22. If stakeholders were aware of existing "long term problems" with the existing regulations and/or the proposed draft regulations, these issues should have been brought to us and discussed early in the process, not in the final comment period, as the regulated community was well aware Regulation 22 was being revised by the agency.</p>				
<b>Notes:</b>				

COMMENT ID:	AEF-2	AGREE	DISAGREE	X
<p><b>Comment :</b></p> <p>A reoccurring problem of inadequate cost/benefit analysis is apparent with this rulemaking proposal. The AEF has requested that the PCE Commission require adequate analysis of more stringent portions of Reg. 23, the hazardous waste regulation, in order to comply with an 11 year-old law that has been consistently ignored or at best, only loosely applied. The same can be said of Reg. 22. We should point out that the state's total economic development efforts these days is focused on landing a super project in east Arkansas and in order to comply with relevant air pollution regulations, the Department has developed a "cost/benefit" clause within Reg. 19, currently out for public review, that allows the Director to consider the economic and social benefits vs. the environmental costs of such a project in the permitting process.</p> <p>The importance of conducting a relevant, adequate and reliable cost/benefit analysis that complies with the intent of Act 1264 of 1993, which states that "...the state <i>must</i> consider the economic impact and environmental benefit..." of state regulations that are more stringent than federal requirements and that such analysis should be made available "...prior to public comment and review of any rule, regulation or change to any rule or regulation that is more stringent than federal requirements..." Perhaps most importantly, Act 1264's requirement that the "Commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas including <i>those entities that will be subject to the regulation.</i>" I should note that one AEF member company has predicted that the new requirements of the regulation will cost his company's Class 3N operation an additional \$15,000 annually.</p> <p>Finally, we should point out that although the Commission is responsible for defining the extent of the analysis through its analysis rulemaking (which has not been promulgated), cost/benefit analysis must "...include a written report which shall be available for public review along with the proposed rule in the public comment period."</p> <p>The AEF respectfully contends that the provisions of Act 1264 of 1993 have not been adequately complied with. The analysis was not available prior to public comment and review and the analysis that has been provided does not meet the provisions outlined above. With so much at stake for the future of Arkansas in both the provisions of Reg. 22 and in its super project economic development efforts, is it too much to ask that the Department 'get it right' on cost/benefit analysis process?</p>				
<p><b>Response:</b></p> <p>ADEQ disagrees. Act 1264 of 1993, states that the state must consider the economic impact and environmental benefit of state regulations that are more stringent than federal requirements. Most of the requirements in Regulation 22 are identical to EPA requirements. The comment does not indicate which, if any, of the proposed changes in Regulation 22 are more stringent than federal law. ADEQ has determined that all changes proposed in the revision to Regulation 22 will have a minimal economic impact on the regulated community. This does not include the economic impact of requirements in the Regulation that have not been changed by this revision to the Regulation</p>				
<p><b>Notes</b></p>				

<b>COMMENT ID:</b>	<b>AEF-3</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
1. 22.103 (c) (11) – “Facility” should be “Facilities”					
<b>Response:</b>					
ADEQ agrees and will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-4</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.413 (c) – Had understood from previous meetings that “12 inch” requirement would be changed to “sufficient”.					
<b>Response:</b>					
ADEQ disagrees. 12 inches of interim cover is needed to protect landfill slopes from erosion and to establish adequate vegetation.					
<b>Notes:</b>					
Additional information regarding Regulation 22.413 can be found in the response to comment WM-1.					

<b>COMMENT ID:</b>	<b>AEF-5</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
End of Chapter 8. Table 2. For pH, in units column should have “s.u.”, values currently in units column should be shifted to limit column, and text in limit column should be shifted to test method column.					
<b>Response:</b>					
ADEQ agrees. The proposed changes to Table 2 are appropriate and will be made.					
<b>Notes</b>					
<b>Comment ID:</b>	<b>AEF-6</b>	<b>Agree</b>	<b>X</b>	<b>Disagree</b>	
<b>Comment :</b>					



22.1102 (c) - Had understood from previous meetings that text in second paragraph would be changed to "The work plan must include the following studies, as appropriate:"

**Response:**

ADEQ agrees. The inclusion of the words "as appropriate" in the second paragraph of this section will allow some discretion as to what specific investigation activities will be required at a given site. It is agreed each site may have individual characteristics which dictate which investigations at that site may or may not be required. Given a geotechnical and hydrogeologic work plan submitted for a specific site must be reviewed and approved by the SWMD prior to implementation, the addition of this language would not be a problem.

**Notes**

<b>COMMENT ID:</b>	<b>AEF-7</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1203 (g) (6) – Add comma after "changes".					
22.1203 (i) (2) – "compared" is misspelled.					
<b>Response:</b>					
ADEQ agrees and will incorporate the suggested typographical corrections into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-8</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1204 (c) – After "increase" in first sentence, add "(or decrease for pH)"					
<b>Response:</b>					
The ADEQ agrees. The proposed changes are appropriate and will be made.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-9</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.1204 (e) (5) – Specific statistical method cannot be selected until background data has been evaluated.					

This is after the Sampling and Analysis Plan (SAP) has been submitted for a new facility. Suggest requiring list of possible methods of analysis be provided in SAP and that the specific statistical evaluation method be submitted after analysis of background data (e.g., spatial variability for interwell/intrawell tests).

The language under 22.1204 (d) has been struck that requires the analysis of Cl, TDS, SO<sub>4</sub>, TOC, pH, specific conductance, iron, and manganese.

**Response:**

It is the opinion of ADEQ, the existing language in this section is appropriate. However, there is nothing in the regulation that requires the permittee to choose a method for performing statistical analysis when the initial Sampling and Analysis Plan for that facility. The permittee may provide documentation as to what statistical methodologies they may wish to utilize and select which statistical method they wish to utilize at a later date based on the background information gathered. The permittee should notify the SWMD at a later date concerning which statistical evaluation method will be utilized for the facility.

**Notes:**

<b>COMMENT ID:</b>	<b>AEF-10</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

The AEF membership believes that language related to Class 3 records retention is entirely inadequate. The volume of records required "...until destruction of the records is authorized by the Director following the completion of the post closure monitoring period" is enough to fill a landfill cell in and of itself. We encourage the Department to carefully analyze the required record list to determine which are actually needed to adequately monitor the unique characteristics of industrial private landfills. For instance, Walter Wright of the Mitchell firm has suggested that explosive gas and closure/post closure records be retained for a period determined by the Director, while most other Class 3 records could be retained for only 5 years and still provide adequate protection and enforcement authority.

**Response:**

ADEQ disagrees and believes that the records required to be maintained by Regulation 22.520 are necessary to ensure the protection of human health and the environment. The records that are required to be maintained by Regulation 22 are less stringent than the EPA Guide for Industrial Waste Management. The Guide was developed by the EPA's Office of Solid Waste in conjunction with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and environmental and industrial representatives. Though the Guide is a voluntary document, the document was developed in a partnership arrangement, with members of the industrial community. The ADEQ does understand the amount of records required to be maintained and is open to digital storage of documents.

**Notes**

<b>COMMENT ID:</b>	<b>AEF-11</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
<p>“Beneficial Fill” definition in 22.102 should specifically address coal combustion products. While we appreciate the Department’s efforts to walk a fine line between public perception on the one hand and environmental / market reality on the other, the inclusion of “coal combustion products” as a beneficial material takes much of the continuing uncertainty out of the equation.</p>					
<b>Response:</b>					
<p>ADEQ disagrees. Materials which are listed in the definition of beneficial fill as waste streams which are considered inert. Coal Combustion Products (fly ash) is not an inert material, it is a reactive material. Heavy metals are known to leach from fly ash. Accordingly fly ash is required to be disposed in a Class 3 landfill in the state. ADEQ is still willing to consider the beneficial use and or re-use of these materials on a site specific case by case basis. It is the opinion of ADEQ the inclusion of coal combustion products in the definition of approved beneficial fill materials is not appropriate.</p>					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-12</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
<p>The definition of what constitutes a major or minor modification is absolutely critical to a consistent regulation. It is unclear to us if the inconsistencies between Section 22.308 and Section 22.309 mean for those definitions and the duration of a landfill cell. Additionally, it is unclear what is meant by the permitted area and what constitutes expansions. These definitions are central to the entire regulation and should be clearly defined</p>					
<b>Response:</b>					
<p>ADEQ disagrees. As per Regulation 22.308(b): “The decision on whether or not a proposed modification may be considered major or minor rests solely with the Director”. The definitions regarding major and minor modifications, in the Regulation, are only intended to give a permittee general information regarding the potential for the Director to classify a modification major or minor. The ADEQ does agree that a definition of the permitted area and permitted disposal area should be included in the Regulation 22.102</p>					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-13</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					

The regulations throughout refer to specific floodplain restrictions. These sections should simply reference FEMA regulations for what constitutes a floodplain and any restrictions.

**Response:**

ADEQ disagrees. The Regulation may not be less stringent than the Federal Regulation. The current Regulation is equivalent to 40 CFR 258.11 in regards to Floodplain Restrictions.

**Notes**

<b>COMMENT ID:</b>	<b>AEF-14</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Waste exclusion plan requirements should correctly reference regulations other than Regulation 22 for waste restrictions to remain consistent with federal programs.					
<b>Response:</b>					
The ADEQ agrees that the Waste exclusion plan requirements should correctly reference regulations other than Regulation 22 for waste restrictions to remain consistent with federal programs. Changes to the Regulation will be made, as needed.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-15</b>	<b>AGREE</b>		<b>DISAGREE</b>	
<b>Comment :</b>					
Finally, the AEF asks that the Department clarify its position relative to incremental financial assurance and to do so within the context of this regulatory change. Much Commission debate has focused on this issue. Please take this opportunity to spell out the Commission's stated intent.					
<b>Response:</b>					
The ADEQ has reviewed in detail all provisions for incremental financing included in the Regulation including the revisions included in Regulation 22.1401 of the draft Regulation 22. The existing Regulation 22, prior to the additions to 22.1401, allows for the incremental funding of financial assurance. There are two possible ways to perform incremental financing of financial assurance based on the current Regulation 22. The first existing method of incremental financing is utilization of the trust fund as a mechanism. With the trust fund mechanism, a facility has the option of placing an amount of Financial assurance in a trust fund each year of operation of the facility. The fund is equal to the total amount of Financial Assurance needed for the full Closure and Post Closure Care of the Facility divided by the total number of years of life for the facility. For example if a disposal facility requires \$1,000,000 for complete closure and post closure care of					

the facility and the facility is projected to last 10 years, the facility may deposit \$100,000 in a Trust Fund for every year of operation. Under this mechanism, the amount of financial assurance is incrementally required and the total amount of financial assurance in the trust fund at any one time is proportional to the amount of waste disposed in the facility.

The second currently available method for incremental funding of financial assurance involves the incremental closure of a facility. The current requirement for the posting of financial assurance for closure is based on a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all permitted facilities ever requiring a final cover at one time as detailed in the facility closure plan. A facility may elect to prepare the closure plan so that areas of the facility receive final cover throughout the life of the facility. This would be in place of closing the entire facility at one time following the facility reaching the permitted waste disposal volume. The facility could then decide, at its discretion how much area would be open at any one time. For example, if a 100 acre facility is divided into 5 – 20 acre cells, the facility could design the Closure plan so that the first cell is closed prior to the opening of the third cell, the second cell is closed prior to the opening of the fourth cell, etc. Based on this fill progression and closure plan, financial assurance would be based on 40 Acres (Cell 1 and 2) instead of on the entire 100 acres. Furthermore a facility may elect to divide the 100 Acre disposal area into 40 - 2.5 Acre cells. In this scenario the closure plan can be written where the first cell is closed prior to the opening of the third cell, the second cell is closed prior to the opening of the fourth cell, etc., Based on this scenario the financial assurance is based on only 5 acres.

Under the existing Regulation without the additions to Regulation 1401, a facility has many options on how to fund financial assurance incrementally. This is true whether the facility elects to close portions of the disposal area throughout the life of the facility or if the facility decides to close the facility in one construction event. A facility, based on its approved closure plan, can raise or lower the amount of required financial assurance depending on how the approved Closure Plan for the facility is prepared.

ADEQ doesn't agree with the additions to Regulation 22.1401 in the proposed Regulation 22. The additions to the Regulation are not in accordance with the Federal Regulations. The federal Regulation states as follows:

*258.71 Financial assurance for closure.*

*(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units ever requiring a final cover as required under §258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the State Director that the estimate has been placed in the operating record.*

*(1) The cost estimate must equal the cost of closing the largest area of all MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see §258.60(c)(2) of this part).*

*(2) During the active life of the MSWLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.*

*(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any*

*time during the remaining active life.*

*(4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The owner or operator must notify the State Director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.*

*(b) The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with §258.74. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with §258.60 (h) and (i).*

In addition the proposed changes to Regulation 22.1401 do not reflect the provisions of ACA 8-6-1603. ACA 8-6-1603 is consistent with provisions found in 40 CFR 258:71 as shown above. ACA 8-6-1603 (a) states as follows:

***(a) Financial Assurance for Closure.***

*(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility requiring closure as required under the regulations issued pursuant to this subchapter and the permit during the active life of the facility in accordance with the closure plan.*

*(2) The cost estimate shall equal the cost of closing the largest area of any solid waste management facility requiring closure at any time during its active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.*

*(3) During the active life of the solid waste management facility, the owner or operator shall annually adjust the closure cost estimate for inflation.*

*(4)(A) The owner or operator shall establish financial assurance for closure of any permitted solid waste management facility in compliance with the regulations issued pursuant to this subchapter and the permit.*

*(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for closure until released from financial assurance requirements by demonstrating compliance with regulations issued pursuant to this subchapter and the permit.*

*(C) The amount of financial assurance shall be in accordance with § [8-6-1002\(e\)](#) and the regulations issued in that subsection.*

Based on the information contained above, ADEQ has determined 3 possible revisions to Regulation 22.1401. The first option is to remove the added statements at the end of part (a) and the Regulation will remain as currently presented in the Regulation. The second option is to leave the Regulation as presented in the draft Regulation 22 but add the requirement that Financial Assurance must be updated in association with all Construction Quality Assurance Reports. Option 3 is to remove the added portions to Regulation 22.1401 and in place of the removed statements, the ADEQ will add a definition of incremental financing to Regulation 22.102 and will add a statement in Regulation 22.1402 that an owner may elect to perform incremental closure of a facility as detailed in the facilities approved Closure Plan. ADEQ believes that option one is the option which is in compliance with Arkansas Statute and Federal Guidelines.

**Notes**

<b>COMMENT ID:</b>	<b>AEF-16</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment:</b> <p>The language under 22.1204 (d) has been struck that requires the analysis of Cl, TDS, SO<sub>4</sub>, TOC, pH, specific conductance, iron, and manganese.</p> <p>Appendix 1 requires analysis of Cl, SO<sub>4</sub>, TDS, pH, and specific conductance. Have requirements to monitor for TOC, iron, and manganese been removed intentionally? Can facilities that currently monitor those parameters petition to remove them from their detection monitoring list?</p> <p>None of the parameters that have been struck from 22.1204 (d) are on the Appendix 2 or 3 lists. Can facilities that currently monitor those parameters petition to remove them from their detection monitoring list?</p>					
<b>Response:</b> <p>ADEQ agrees. This sentence was struck because it was thought each of these constituents were listed in Appendix 1. ADEQ had not properly cross referenced whether each of the deleted constituents was referenced in Appendix 1, 2, or 3. Therefore, in order to clarify which constituents a facility will have to sample for, it is recommended the sentence referencing these constituents not be struck from the regulation.</p>					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AEF-17</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b> <p>First paragraph of Appendix 3 refers you back to analytical methods in 40 CFR Part 141. These are drinking water methods that the analytical labs typically do not use. I recommend that language be added in Appendix 3 that says analysis should be performed using approved SW 846 methods or just delete the reference to methods there. It is already covered in 22.1204 (d). (The current language in Appendix 3 contradicts the methods specified in 22.1204 (d).)</p>					
<b>Response:</b> <p>ADEQ agrees. In the opening paragraph in Appendix 3 the second sentence in this paragraph referencing the analytical methods for these contaminants may be found in 40 CFR Part 141...is not the appropriate reference. Therefore, this sentence shall be deleted from the Appendix 3 opening statement.</p>					
<b>Notes</b>					
<b>Comment ID:</b>	<b>AEF-18</b>	<b>Agree</b>	<b>x</b>	<b>Disagree</b>	
<b>Comment :</b> <p>Appendix 3 requires monitoring coliform bacteria and radiological parameters. Would suggest taking those</p>					

off the list. If there was ever a facility where those might be an issue, ADEQ is still covered because text in first paragraph of Appendix 3 says "Monitoring of other parameters may be required based on specific waste characteristics".

**Response:**

ADEQ agrees. Coliform bacteria and radiological parameters are not typically constituents sampled for in a landfill ground water monitoring program. It is agreed Appendix 3 provides for the monitoring of other parameters based on specific waste characteristics. Therefore, coliform bacteria and radiological parameters will be deleted from Appendix 3.

**Notes**

<b>COMMENT ID:</b>	<b>AC-1</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.102.25- Composting should not be included in the definition of disposal site or disposal facility. Inclusion of composting as disposal caused considerable confusion in the recent Arkansas state sales tax law which covered disposal. In addition, ADEQ programs such as recycling grants, recycling materials diverted from landfills, etc. uniformly treat composting as recycling.					
<b>Response:</b>					
ADEQ agrees that composting should be removed from the definition disposal site or disposal facility.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AC-2</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Definitions for the material recycling facility for Class 4 waste should be included however it is to be called and denoted by (currently C&DRF).					
<b>Response:</b>					
ADEQ agrees that a definition of C&DRF should be included in the Regulation 22.102 of the draft Regulation.					
<b>Notes</b>					



<b>COMMENT ID:</b>	<b>AC-3</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
803c- This section appears to require a wetlands jurisdictional determination (JD) regardless of the location. Some discretionary language should be included such as “if required by ADEQ” or “where appropriate” to relieve the applicant of unnecessary regulatory burden of obtaining a JD in areas where there are clearly no wetlands.					
<b>Response:</b>					
ADEQ disagrees that a jurisdictional determination should not be required for all sites. A wetlands determination is the process to document that the site does not contain wetlands. Without a wetlands determination it is not possible to determine if a site does or does not contain wetlands. The Regulation will be changed, however, to not require a delineation of wetlands unless the jurisdictional determination is that the site does contain wetlands.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AC-4</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
803(f)- These provisions for bedrock and groundwater separation are not necessary if the impermeable composting floor is properly constructed.					
<b>Response:</b>					
ADEQ disagrees. This comment refers to Section 803(b) not (f). It is the opinion of SWMD staff the separation distances referenced in this section are appropriate in some instances. Ground water separation and/or bedrock separation issues at specific facilities may influence the proper construction, worthiness and lifespan of the impermeable liner. Therefore, it is not recommended this section be removed from the regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AC-5</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
804(a)(7)(iii) - see above. The Aquifer properties determination is excessive if the composting floor is properly constructed.					
<b>Response:</b>					

ADEQ agrees. It appears a determination of aquifer characteristics in this instance is excessive. However this change was not initiated as part of the rule making petition and was not included in departments review of the financial impact of the proposed changes. This change should be made in future Regulation 22 revisions.

**Notes:**

<b>COMMENT ID:</b>	<b>AC-6</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<p><b>Comment :</b></p> <p>805(b)- The regulated community would appreciate ADEQ defining the “requirements of this chapter” rather than sending the applicant searching through the chapter. This language promotes incomplete applications. Refer to 804(b)(8)(I). If there are additional requirements elsewhere in the chapter, the section where the requirements are located should be identified.</p> <p>805c- ditto above.</p>					
<p><b>Response:</b></p> <p>ADEQ disagrees. The change to this section was made to eliminate a redundancy in the regulations. Since the entire chapter relates to different aspects of the design and permitting of a compost facility, the entire chapter must be referenced in relation to requirements for compost facilities.</p>					
<p><b>Notes</b></p>					

<b>COMMENT ID:</b>	<b>AC-7</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<p><b>Comment :</b></p> <p>806(b)(3)- This Regulation is confusing and inconsistent with 22.803 (f) and which mentions a composting floor and a composting pad. There are two general layers The first is an impermeable layer and the second is an operating surface to protect the impermeable layer and provide traction. 22.803.(f) refers to a pad and a floor, but does not differentiate between the two. 22.806 (b) refers to a floor which seems to include the impermeable layer and the operating surface. The title for 22.806 (b) refers to Type O and S facilities, but Regulation 22,806 (b) only lists Type S facilities. Do Type O facilities have a different impermeable layer requirement?</p>					
<p><b>Response:</b></p> <p>The ADEQ agrees. The confusion between pad and floor needs to be addressed in the Regulation. The references will be changed to “the top of the compost floor system. The Regulation will also be modified to require the same standard for Type O and S facilities.</p>					

**Notes**

<b>COMMENT ID:</b>	<b>AC-8</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.809 (a) Only Type S is listed as having labeling requirements. Do Type O compost facilities require labels?					
<b>Response:</b>					
The ADEQ agrees and will incorporate the change into the Regulation to include a labeling requirement for a Type O compost facility.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>AC-9</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
<u>Chapter 9 Transfer Stations-</u>					
This Regulation has been modified to include WRF facilities. Previously, unscrupulous applicants received a General Permit for a SWMRF because a Certificate of Need was not required and then operated the facility as a Transfer Station when very little material was actually recycled. Regulation 22 revisions have been modified so that any facility which receives Class 1 waste requires a Certificate of Need. The requirement of a Certificate of Need for a Transfer Station is probably not warranted however beyond that, there are regulatory problems in the way this Regulation has been drafted. Recovery of Class 1 materials at a Transfer Station is referenced in 22.904(g), however the WRF designation outlined in Chapter 10 is mentioned in Chapter 9. It is unclear if a facility that performs the transfer function and the waste recovery function receives two permits or one permit. Individual and General permits are mentioned but no differentiation is made when a General Permit is required and when an Individual Permit is required.					
<b>Response:</b>					
ADEQ agrees and the reference in Regulation 22.904(g) will be removed or modified to comply with the new requirements for Waste Recovery Facilities and Transfer Stations. A determination on applicability of the general permit and an individual permit will be made on a case by case basis. Most facilities will be covered by the general permit. When site conditions warrant or where operational procedures vary from those in the General permit, individual permits will be issued.					
<b>Notes</b>					

COMMENT ID:	AC-10	AGREE	X	DISAGREE	
<p><b>Comment :</b></p> <p><u>Chapter 10- Construction and Demolition (C &amp; D) and Source Separated Material Recycling Facilities</u></p> <p>Revisions to this Chapter are part of an overall plan to clarify and streamline various types of recycling or material recovery facilities which is appropriate, however there is some considerable confusion contained in the Chapter which should be corrected or additional problems will ensue in facilities being permitted for one operation and then operating in another class of facility because of confusion in the Chapter. This has been a problem with MRFs operating as Transfer Stations in the past. The title says C&amp;D and MRF, but also contains requirements for WRF in Regulation 22.1006. There appear to be three classes of recycling facilities: material recycling facilities (MRF) which are for source separated materials; C&amp;DRF for C&amp;D/Class 4 materials and solid waste recycling facilities (WRF) for Class 1 or municipal solid waste (MSW). The MRF and WRF are defined in Chapter 1, but the C&amp;DRF is not. All three classes should be defined in the Definitions. The WRF is not listed under the applicability which assumedly refers to the entire Chapter, but then is “tacked on” at the end in 22.1006.</p> <p>The first area of confusion is lack of consistency with C&amp;D waste and Class 4 waste. The terms appear to be used interchangeably, but are not. All C&amp;D waste is Class 4 waste but there are numerous types of Class 4 waste which are not C&amp;D waste which may be recycled. Examples are “white goods” or appliances which can be recycled easily. Similarly stumps and limbs may be C&amp;D waste but not all stumps and limbs are C&amp;D. Stumps and limbs are amenable to recycling through composting. Suggest that this section and all waste type references be changed to Class 4 waste and delete reference to C&amp;D which is a sub-type of Class 4 waste.</p> <p>22.1004(a) Application Procedures refers to C&amp;DRF only and 22.1004(b) Application Contents refers to a solid waste recovery facilities (WRF) only. Again the introduction to 22.1004(b) refers to solid waste recovery facilities (WRF) only while 22.1004(b) (5) refers to Class 4 wastes. The meaning and/or intent is unclear.</p> <p>22.1005(b)- This section appears to contain language which would allow a C&amp;D/Class 4 Recycling Facility to accept Class 1 wastes such as household waste and commercial waste, and Industrial waste is also included which may or may not be Class 1 waste. This language is appropriate for a WRF or “dirty MRF” but not a C&amp;D/Class 4 Recycling facility. If this language is intended for the WRF covered in section 22.1006, it should be clarified or moved..</p>					
<p><b>Response:</b></p> <p>ADEQ agrees that there is some confusion in the different types of materials that can be processed at a Material Recovery Facility. ADEQ will clarify the confusing sections of the regulations.</p>					
<p><b>Notes</b></p>					

<b>COMMENT ID:</b>	<b>AC-11</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
<p>I would also like to address the issue of bagging of yard waste. Collection of yard waste in plastic bags produces multiple problems at composting facilities including blowing plastic, plastic contamination in the compost and other problems. Cost effective means of debagging the yard waste are not available. Hand debagging is very expensive and mechanical debagging is not effective in removing the plastic from the waste stream. Numerous methods are available to avoid the collection of waste in plastic bags including alternate bags such as paper or starch bags, collection of waste with grapple hooks, vacuum machines, and other mechanical means which do not require plastic bags. American Composting, Inc. encourages the prohibition of plastic bags in the upcoming revision to Regulation 22. Instituting a prohibition on plastic bags would eliminate many of the problems present at composting facilities and reduce enforcement problems.</p>					
<b>Response:</b>					
<p>ADEQ does not regulate how yard wastes are handled and bagged prior to processing for composting. The issue of whether or not yard wastes are bagged is an issue which must be resolved locally by each compost facility.</p>					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-1</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
<p>Reg.22.204(e) Director's Decision; The proposed revision is arbitrary and does not provide standing to parties having standing to the proceedings as gained by providing written and oral comments at appropriate times in the proceedings. Therefore, the revision should state;"A person who comments during the proceeding shall be given standing as a party to the proceeding with all rights of every other party".</p>					
<b>Response:</b>					
<p>ADEQ disagrees. Unless a comment is made part of the record, which occurs when the comment is put in writing and submitted timely to ADEQ or made during a public hearing, ADEQ may not know of the comment. ADEQ must have notice of all comments. All comments received in the prescribed method will be reviewed prior to the Director making a decision.</p>					
<b>Notes:</b>					

<b>COMMENT ID:</b>	<b>GZ-2</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					

Quality control and quality assurance of construction of solid waste facilities.

The terms, quality control and quality assurance (QC/QA) are used throughout Regulation 22. Their use is sometimes stated interchangeably. Definitions are not provided for these terms nor are the expectations stipulated. Anticipated activity and results are left to broad interpretations and are likely not acceptably achieved.

The facility owner/permittee is ultimately responsible for conformance with the approved design, regulated design criteria, and these regulations. Lack of conformance must be found and corrected during the construction process, not after-the-fact when latent or non-conforming materials and construction cannot be corrected by the owner or causes undue environmental risk or harm, or places financial burden upon the public user.

Suggested Definitions: Quality Control - The formalized system of inspections and associated activities by which the permittee's suppliers and contractors construct the solid waste facility in conformance with approved designs and associated technical criteria. Quality Assurance - The formalized process that incorporates all quality control plans and activity into an overall project or facility plan to assure that all quality control activity and all material and supplies incorporated into the facility are in compliance with the approved designs and associated criteria.

Para Reg 22 22.425(k) and (l) should be revised or combined to use the correct terminology or consistent terminology.

Para Reg. 22.428 Liner And Final Cover Design and Construction

(a) Quality Control/ Quality Assurance Plans; Bottom, sidewall liners and final covers (both synthetic and clay components, and incidentals mentioned in Reg.22.429(e)) shall be constructed in accordance with written quality control/quality assurance plans. The plan(s) shall be made a part of the operating narrative and shall describe in detail the quality control/quality assurance methods for all aspects of the construction. Site specific plans may be developed using guidance contained in the Generic Construction Quality Assurance Plan for the Lining and Cover Systems - Guidance Document dated September 1992. Copies of the generic plan are available from the Solid Waste Management Division. The QA/QC plan shall incorporate all designs, specifications and technical requirements in the approved design and as contained in this regulation and will not relieve the owner/permittee of the burden to prepare a site specific quality assurance plan.

New Para or addition to 22.429 (h); Geomembrane Quality Control. The manufacturer shall provide a complete quality control plan for the installation of the geomembrane. In addition, the supplier shall provide a QC representative at the site during all construction and testing activities of the geomembrane. A certification that the membrane is installed per plans and technical requirements shall be provided to the QA firm, executed by an official of the supplier.

Para. 22.429 (h). this should be revised to require visits by the professional certifying the construction as stated in overall Quality Assurance plan and at additional times if conditions warrant.

New paragraph. Reporting Changes; The owner/permittee shall report changes from the approved design or

material specifications to the Department when encountered during construction. The reported changes shall be of significant nature as determined by the QA representative in consultation with the designer. Suggested alternatives or corrections should be provided when reported. Changes are to be reported within a timeframe to assure corrective actions before construction is completed. The Director shall approve the significant changes or provide alternatives for selection by the owner/permittee.

Para 429 (j) – first sentence as is. The owner operator shall notify the Department at least two months in advance of the intended and justifiably required date of the need for the completed work. Restricted operations within certain areas shall be identified by the owner/permittee to allow the Department to review the report before approval is granted for overall site disposal operations.

Similar changes and/or references discussed above are need for all landfill classes (1,3 and 4) and other solid waste facility paragraphs in this regulation.

**Response:**

ADEQ agrees that definitions of Quality Assurance and Quality Control are needed in Regulation 22.102. The definition of each term will be consistent with the Generic Construction Quality Assurance Plan.

ADEQ agrees and will revise the Regulations 22.425 (k) and (l) to refer this section of the regulation to the requirements of Regulation 22.428.

ADEQ disagrees with adding the requirement that all designs, specifications, and technical requirements be included in the QA/QC Plan. The QA/QC Plan only addresses Quality Assurance and Quality Control procedures. Technical specifications and design are prepared prior to construction and are associated with the engineered design of the construction. Technical specifications and design are typically more detailed and restrictive than the requirements of Quality Assurance and Quality Control Plan.

The detailed and specific requirements for geomembrane Quality Control are discussed and required in the Generic CQA Plan. ADEQ disagrees that the requirements need to be more specifically detailed in the Regulation.

ADEQ agrees and will add the phrase “or additionally if prescribed in the facilities QA/QC Plan or if conditions warrant.” to Regulation 22.428(h)

ADEQ agrees that changes to the design should be report to the Department as encountered. ADEQ will add the following new section to the regulation: The owner/permittee shall report all proposed changes from the approved design or material specifications to the Department prior to construction The Director shall approve the changes or provide alternatives for selection by the owner/permittee.

The ADEQ disagrees with increasing the review time of CQA Report from two weeks to two months This change will place an undue burden on the permittee.

Notes

<b>COMMENT ID:</b>	<b>GZ-3</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
Reg 22.421 (d) (5); this paragraph should be revised to add the requirement that the location of the waste disposal should be identified by elevation and longitude/latitude on each ticket as obtained from a GPS reading taken by the operator at the active area of the landfill each day or within a timeframe to assure accuracy. This would easily improve accuracy of location of disposed material if unapproved material was taken into the landfill and to protect the users and cities using the landfill.					
<b>Response:</b>					
ADEQ disagrees. This added requirement would place an undue burden on the permittee and cause a significant economic impact. Each facility has a Hazardous Waste Exclusion Plan which details the procedures for excluding the receipt of Hazardous Waste.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-4</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
Under requirements for Surface Water Control a requirement should be added to prevent the operator from making excavations or surface diversions that eliminate or significantly reduce the natural flow of safe runoff from the land owned by the operator onto land adjoining or in close proximity of the land controlled by the operator. This is necessary to assure that ponds, and catchments used by farmers or nearby residents is not eliminated by actions of the landfill operator.					
<b>Response:</b>					
The regulations require an operator to control run on and runoff from the facility. Run on controls prevent flow onto the active portion of the landfill, run off controls prevents surface water runoff from the active areas of the permit. Natural water courses are affected every day by all manner of construction activities. It would be impossible for a landfill operator to control both run-on and run-off and not affect natural water courses in and around the landfill site. The intent of the regulations is to ensure the runoff from a landfill site is safe and unaffected as possible. By doing so, an operator is assuring that ponds and catchments down stream from the facility are not impacted. If is determined an adjacent land owner is impacted by run-off from the facility or their pond is impacted by a lack of run-on into the pond as a result of landfill activities ADEQ and other regulations are in place which would require the operator to rectify the problem or provide a solution to the problem. Therefore, it is not recommended this language be added to the regulation.					
<b>Notes</b>					



<b>COMMENT ID:</b>	<b>GZ-5</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
Reg.22.621 (d) (3); the requirement that the alternative support vegetation in addition to the requirements of para. (d)(1) should be maintained when people live near and within sight of the landfill.					
<b>Response:</b>					
ADEQ disagrees. Any final cover system approved by the Director will be protective of Human health and the environment and at a minimum equivalent to the prescriptive final cover system regardless of the proximity to adjacent residents.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-6</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
A requirement should be added to have the operator prevent mud, trash, and solid waste from being tracked from the landfill active area onto public roads and streets. Additionally, if the landfill accepts Special Materials or uses sludges or petroleum contaminated soils as daily cover, the operator should be required to have a vehicle cleaning facility to remove mud and other material picked up at the active disposal area that will prevent deposits on public roadways.					
<b>Response:</b>					
ADEQ agrees that operators have provisions in place to prevent solid waste from being tracked on to public roads and streets. However this change was not initiated as part of the rule making petition and was not included in departments review of the financial impact of the proposed changes. This change should be made in future Regulation 22 revisions.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-7</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
References are made to “general permits” within this regulation. The use of general permits for solid waste facilities is discouraged due to the variability of facilities and conditions at each site of a proposed solid waste facility. No rules are evident in this regulation regarding “General Permits” and thus should not be discussed unless specific usage or procedures are promulgated under established procedures. The term does not seem to be in the Arkansas statues regarding solid waste management.					

**Response:**

ADEQ disagrees that General Permits do not have a use for solid waste facilities. Facilities such as compost facilities, transfer stations and material recovery facilities are very similar in design and operation from permittee to permittee. Where site conditions or operating procedures for a facility differ from the General Permit, Individual permits may be issued.

**Notes**

<b>COMMENT ID:</b>	<b>GZ-8</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

Under definitions, Unstable Areas: The CFR for this item specifically includes karst terrain as an unstable area requiring specific design or demonstration activity. The last sentence should be revised to state the CFR definition.

**Response:**

Response: ADEQ agrees. The following will be added to Regulation 22.407

b) For purposes of this section:

- (1) Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrain.
- (2) Structural components means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.
- (3) Poor foundation conditions means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.
- (4) Areas susceptible to mass movement means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.
- (5) Karst terrain means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrain include, but are not limited to, sinkholes, sinking streams,

caves, large springs, and blind valleys.

**Notes**

Since this change is being made to make Regulation 22 consistent with the Federal Regulation, a financial review of the change is not required and the ADEQ. In addition ADEQ anticipates no significant financial impact from the change.

<b>COMMENT ID:</b>	<b>GZ-9</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Reg 22.203; there does not seem to be any Needs Assessment prepared or required by the remaining sections in this revised regulation. Seems that the deleted sections are needed or at least part of them are needed to make this revision workable. Please reconsider the deletion of the large sections of chapter two. These sections provide good definition to the local authority and in some cases, items discussed in this section are needed to clarify sections remaining in the revised regulation 22.					
<b>Response:</b>					
ADEQ agrees. The deleted Regulations relating to the needs assessment will not be deleted from the regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-10</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Reg.22.305 (h). The content of comments allowed should be broader than “regarding the technical aspects of the preliminary decision”. This restriction should be eliminated to allow comments concerning technical matters and regulatory conformance, since the Department has reviewed both of these elements at this point in the permitting process.					
<b>Response:</b>					
ADEQ agrees and will add the phrase “and regulatory conformance” to the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>GZ-11</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

Reg. 22.305(j)(1). The referenced paragraph Reg.22.305(h) does not speak to requesting a hearing, but only to submitting comments. The process of being notified by mail of a hearing needs to be clarified

**Response:**

ADEQ disagrees. No change has been made to the provision cited except to change the reference to the provisions in the Regulation by the full cite instead of referring to just the Section. This was a housekeeping change to make all citations consistent. The Director has the sole discretion for determining whether to hold a public hearing. If an interested party requests a hearing with his or her comments, that party will be mailed notice of a public hearing if one is convened. If a public hearing is convened, the details are also made public by notice of the proceedings published at least 20 days before the hearing.

**Notes**

<b>COMMENT ID:</b>	<b>GZ-12</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

Reg.22.307. Previous permitting activity has shown that applicants do not provide consistent data when asked to submit a disclosure statement. To make this meaningful for evaluation purposes, the term disclosure statement needs more definition.

**Response:**

ADEQ disagrees. The disclosure statement required for permit transfer is consistent with the disclosure requirements for applying for a new permit and consistent with general ADEQ procedures

**Notes**

<b>COMMENT ID:</b>	<b>GZ-13</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

Reg.22.308(c)(1); while inaccuracies occur from computation estimates, or variable bottom elevations, for example, these regulations are very explicit that the height elevations and slopes stipulated in the permit shall be maintained and even overfills anticipating waste consolidation above the permitted elevations will not be allowed.. That approach should be continued. Suggest adding a sentence, "The approved and permitted height and slopes of the landfill must be maintained as required by Reg. 22.309."

**Response:**

ADEQ disagrees. The purpose of this Regulation is to establish some general criteria for the classification of

a permit modification. Sole discretion to classify the permit as major or minor lies with the Director. The intent of this change was to allow a minor slope or height change and still classify the permit as minor.

**Notes**

<b>COMMENT ID:</b>	<b>GZ-14</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<p><b>Comment :</b></p> <p>Reg. 22.302(a); the language of this paragraph seems to eliminate the need for a pre-application for vertical expansions. Several of the items to be submitted in the preapplication (Reg.22.302(b) are needed for a vertical expansion, i.e. fees, approved Certificate of Need, etc. Therefore this paragraph should require a pre-application for a vertical expansion.</p>					
<p><b>Response:</b></p> <p>ADEQ disagrees that a pre-application is needed for a vertical expansion. The purpose of a pre-application is to investigate a proposed undisturbed disposal area and to make a preliminary determination on a site. A vertical expansion is over areas which have already received waste and as such the site has already been determined acceptable for disposal. The lack of need for a Pre-application does not eliminate the requirement of a Certificate of Need.</p>					
<p><b>Notes</b></p>					

<b>COMMENT ID:</b>	<b>GZ-15</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<p><b>Comment :</b></p> <p>Reg.22.408 (c) or (d). To mitigate the adverse effects on surrounding private property, a sentence should be added encouraging landscaping and screening at any facility that is in close proximity and in full view of residences or buildings regularly used for group assembly. Suggestion: The Department may require landscaping or screening on property owned by the operator/permittee where residences are in close proximity of the facility and in full view of the landfill or along heavily traveled roadways.</p>					
<p><b>Response:</b></p> <p>ADEQ agrees that additional landscaping may be needed when residences are in close proximity. However this change was not initiated as part of the rule making petition and was not included in departments review of the financial impact of the proposed changes. This change should be made in future Regulation 22 revisions.</p>					
<p><b>Notes</b></p>					

<b>COMMENT ID:</b>	<b>LS-1</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<p><b>Comment :</b></p> <p>We would like to submit a comment on Item #7 on page 3-5 under the General application requirements (1st class landfills) in Chapter 3 Application Procedures.</p> <p>There are two changes proposed to this rule and they are both highly questionable. Changing the distance from 2 miles to 1/2 mile is not in the interest of the public. The geology of the northwest (and probably the northeast parts of the state if not the whole state) make our ground water very susceptible to contamination from the leachate of landfills. Identifying wells within a 2 mile distance is a stronger safeguard for the public than the 1/2 mile proposal.</p> <p>The other proposed change specifies identifying wells used only for human consumption. Many livestock and poultry producers in our rural areas depend on well water for their livestock operations and such wells also need to be identified. Their livelihood depends on good water and their interests should not be overlooked. The present requirement that dwellings and wells be identified within 2 miles of the site is a reasonable and prudent rule that works for the welfare of the public. We urge that it be maintained and not changed.</p>					
<p><b>Response:</b></p> <p>ADEQ agrees. The original language requiring 2 mile radius of investigation of all wells will be retained in the Regulation.</p>					
<p><b>Notes</b></p>					

<b>COMMENT ID:</b>	<b>BFI-1</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<p><b>Comment :</b></p> <p>It is our comment that the language change that eliminates the "or registered professional engineer" from site survey requirements [e.g. Reg 22.1301 (i)] should not be implemented in the regulations. While the work that is required to satisfy the intent of the regs will most likely be done by a land surveyor, the regulation also implies, in our opinion, that the site survey would be certified by a PLS registered in Arkansas. We believe that the project engineer should be able to certify the site survey as part of the overall set of drawings. This is within the purview of many engineers that are involved with solid waste projects. Furthermore, there has been discussion at the Board of Registration level as introduced by Mr. Joe Clements, that the current definition of surveyor purview does not include topographic surveys. It is our understanding that Board may augment the definition to include topographic surveys and floodplain elevation certificates, etc. in the future, but that the current definition may not be clear as to whether surveyors can certify topographic surveys or not.</p>					
<p><b>Response:</b></p>					

ADEQ agrees and will incorporate the suggestion into Regulation 22.1301.

**Notes**

<b>COMMENT ID:</b>	<b>CLL-1</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment**

Change of the due date for the submittal of the Annual Report for Composting Facilities. My request is to change the above due date from March the 31st to April the 30th of each year in order to prevent the overlapping of both the Annual Engineering Inspection Report for Class 1 Landfills and the Annual Report for Composting Facilities.

Change from the current closure cost estimation for landfill's financial assurance (which utilizes the largest area ever requiring final cover) to the one that utilizes "incremental closure costs" (which only utilizes the currently constructed areas that have not received a final cover to date). The latter approach better reflects the actual financial needs associated with the phased closure of any landfill facility.

**Response:**

ADEQ disagrees. The three month period given for the completion of the annual Engineering Reports is sufficient. Please refer to comment AEF-15 for a response regarding the incremental closure of a facility.

**Notes**

<b>COMMENT ID:</b>	<b>AEP-1</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

On page 14-9, under "(2) Recordkeeping and Reporting Requirements", §1405(e)(2)(i) , where there is reference to "furnish those records [demonstrating meeting the corporate financial test] to the Director for approval," SWPCO does not believe such an approval process should be required. To be consistent with EPA financial assurance regulations, there should not be an approval process, however, a regulated entity must demonstrate that it meets the criteria for the corporate financial test, and if it does, the entity should be deemed in compliance. ADEQ can dispute whether the regulated entity meets the criteria, but this regulation should be set up so that the owner/operator can meet the test without prior approval. [similar to 40 CFR 264.143(f) , which uses language such as ..."To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator... ]

**Response:**

ADEQ is not proposing a change to this section of the Regulation and believes the current Regulation is needed to insure adequate financial assurance is maintained for all sites.

**Notes**

<b>COMMENT ID:</b>	<b>NS-1</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
<p><b>Comment :</b></p> <p>The proposed Section Reg.22.108 - Petroleum Contaminated Soils was revised by ADEQ by removing the contamination limits on TPH and BTEX. ADEQ is placing the burden on the permittee to establish the acceptable contamination limits and make that part of the facility's hazardous waste exclusion plan. It is my opinion that the contamination levels in the existing Regulation 22 to be reinstated. If ADEQ chooses to remove those limits, then ADEQ must show an economic impact analysis for _his change. I understand that one Class 1 facility in Union County, Arkansas will benefit greatly by removing the TPH and BTEX limit. Therefore, ADEO must show the potential estimated financial benefit for this facility in Union County.</p> <p><b>Response:</b></p> <p>ADEQ disagrees. Each Class 1 facility operator has the option to take or decline specific waste streams coming into their facility. Eliminating contamination limits for petroleum contaminated (PC) soils allows each operator to decide if they wish to receive those PC soils. The current regulations often preclude the disposal of PC soils at Class 1 landfills in the state and drive up the cost of remediation activities as these PC soils must be transported out of state for disposal. It is the opinion of the ADEQ if the PC soils are not sufficiently contaminated to be considered to be Hazardous Materials, disposal of PC Soils in Class 1 landfills in the state is appropriate. Several Class 1 operators have requested this change regarding disposal of PC soils be made. If any Class 1 operator wishes the exclude these PC soil waste streams from entering their facility, then they may do so. No modification of their Hazardous Waste Exclusion Plan would be required. Modifying the Hazardous Waste Exclusion Plan to allow receipt of PC soils is an easy matter for most Class 1 facilities.</p> <p>Regarding the referenced Class 1 facility in Union County, this facility will not benefit from this change as they are the only Class 1 facility in the state with a separate permit for treating PC soils. The proposed changes to the regulations allowing PC soil disposal at Class 1 landfills affectively negates the need to treat these soils at their Class 1 facility prior to disposal.</p> <p><b>Notes</b></p>				

<b>COMMENT ID:</b>	<b>ALB-1</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
<p><b>Comment :</b></p> <p><u>General Comments:</u> Class 3N landfills are not federally regulated. ADEQ is required by state law to perform a cost benefit analysis (CBA) of any regulations more stringent than federal that are proposed to PC&amp;E for adoption. This commenter respectfully requests the Department withdraw the present proposed Regulation 22 until the many conflicts, duplications and unnecessary burdens on the regulated community can be resolved.</p>				



**Response:**

The Regulation of Class 3N landfills is included in the existing Regulation 22. ADEQ is only proposing minimal changes to the Regulations governing Class 3 N Landfills. The costs benefit analysis referred to would only be required if the Regulation was being modified to include Class 3N landfills if the existing Regulation 22 did not include Class 3N Landfills. No change to the Regulation is proposed based on this comment.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-2</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

1. 22.102 - Definition of "Beneficial Fill:" This commenter requests the following portion of the definition be stricken "However, placement..." and continuing to the end of the paragraph. This portion of the definition appears to be guidance, which should not appear in a regulation. If the statement is not guidance, then this commenter requests the definition of beneficial fill be stricken.

**Response:**

ADEQ disagrees. The definition of Beneficial Fill is needed in the Regulation 22. The Regulation the commenter has requested be stricken further defines the term and will prevent a potential misuse of beneficial fill.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-3</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment:**

2. 22.102 - Definition of "Operating Plan or Operating Narrative:" This commenter requests that this definition be reconciled with the requirements of the rest of Regulation 22, and that the term "Operating Narrative" be stricken from the regulation. The definition at 22.102 uses the word "narrative" to define the term "Operating Narrative." The submission and/ or approval of an "Operating Plan" is required in several parts of the regulation, but I could not find a direct description of what the Department is requiring as contents of the "Operating Plan." There is a description of the "Operating Plan and Narrative" at 22.521. There are no Federal requirements for an Operating Plan for landfills in the 3N classification.

**Response:**

ADEQ agrees and will change all references to the Operating Plan or the Operating Narrative to the Operating Plan and Narrative.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-4</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.103(c)(3) - this commenter requests the phrase "industrial and commercial" be stricken from the description of Class 3N facilities. The phrase is redundant (Class 3N can receive non-hazardous waste streams within the design capability) and possibly misleading.					
<b>Response:</b>					
ADEQ disagrees. Class 3N landfills can accept waste streams described by the definitions as commercial and wastes described by the definitions as industrial. The definition as presented is not redundant or misleading.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ALB-5</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
22.1 03( c )(3) - There is no definition for Type Y facilities.					
<b>Response:</b>					
ADEQ agrees. Definitions of each of the types of compost facilities will be added to Regulation 22.102.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ALB-6</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.201 - This section does not apply to Class 3N facilities. This commenter requests this fact be plainly stated in 22.201(a).					
22.202 - This section does not apply to Class 3N facilities. This commenter requests this fact be plainly stated in 22.202(a).					
<b>Response:</b>					
ADEQ disagrees that the Regulation 22.201 does not apply to Class 3N facilities and Regulation 22.202 clearly states that it applies to high impact solid waste management facilities. As such the section is proposed to remain in the Regulation, as presented.					

## Notes

<b>COMMENT ID:</b>	<b>ALB-7</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.301(i) - This commenter requests the reference to "professional engineer" and "professional geologist" be removed from this paragraph, and appropriately added to 22.303(c)(1 through 22) with justification. Arkansas statutes require these services when appropriate, but 22.301(i) is not the proper location. For instance, a requirement for the services of a properly accredited engineer at 22.303(c)(14) is appropriate, but would not be necessary at 22.303(c)(6), and could be outside the expertise of an otherwise well qualified engineer.

**Response:**

ADEQ disagrees. The inclusion of the professional requirements in sections 22.301(i) is needed for clarity and simplicity. The requirement is general in nature and covers all applicable sections of the regulation as stated in 22.301(i).

## Notes

<b>COMMENT ID:</b>	<b>ALB-8</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment**

22.520(a) - This commenter requests that a specific record retention period be added to this section for each record listed in 22.520(a)(1 through 10) and a cost-benefit analysis for each time period selected by the Department. Retention of records is costly and time consuming for the permittee. The Department should justify the imposition of this burden by a clear demonstration of the benefits as opposed to the costs

**Response:**

ADEQ disagrees. No additional records are being required in the proposed Regulation 22 as compared to the existing Regulation 22. ADEQ believes the records required to be maintained by Arkansas Regulation 22.520 are necessary to ensure the protection of human health and the environment. The records that are required to be maintained by Arkansas Regulation 22 are less stringent than the EPA Guide for Industrial Waste Management. The Guide was developed by the EPA's Office of Solid Waste in conjunction with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and environmental and industrial representatives. Though the Guide is a voluntary document, the document was developed in a partnership arrangement, with members of the industrial community. The ADEQ does understand the amount of records required to be maintained and is open to digital storage of documents. The retention period for all records is detailed in Regulation 22.520(d).

**Notes**

<b>COMMENT ID:</b>	<b>ALB-9</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.520(d) - This commenter requests that this section be stricken. The maintenance of all records for the life of a landfill plus the 30 years' post-closure monitoring is unreasonable. Regulation 22 is the only regulation that has a requirement to maintain all records, even insignificant and transient findings (i.e., daily inspection check sheets) for the life of the facility plus the post-closure period. The regulation should specify exactly which records must be retained, the retention period, and the Department should provide justification for the inclusion of the record and the selection of the retention period. Strike the phrase "required by 22.520(a) of this chapter" may be substituted. There is no definition of "Operating Record" in 22.102, although there are many references to documents inserted into the "Operating Record."

**Response:**

ADEQ disagrees. Please see comment ALB-3 for a detailed response..

**Notes**

<b>COMMENT ID:</b>	<b>ALB-10</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment**

22.521 - This commenter requests the phrase "and narrative" be deleted from this section as redundant. 22.521 - This commenter requests this section, and the requirement for an "Operating Plan" be deleted. All the elements of the "Operating Plan" as laid out in this section are covered in the permit application and permit issuance process. This regulation sets out what is required to construct, operate close and care for a closed facility. Adding a requirement for the creation and submission of an additional, redundant document is a financial burden, and the benefit of such a document should be assessed before that burden (to both the permittee and the Department, since the Department must review it) is imposed.

**Response:**

Please see comment ALB-3 for a response to this comment. Also ADEQ feels that a written Operating Plan and Narrative is need to summarize the operating procedures for a facility and to provide guidance to operations personnel.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-11</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.522 - This commenter requests the Department add an applicability section excluding Class 3N landfills from these expanded requirements. An ADEQ inspector visits all Class 3N landfills on a regular, routine basis and inspects the landfills for all the compliance-related items listed in section 22.522.

**Response:**

ADEQ disagrees. The required Annual Engineering Inspection Report under Regulation 22.522 is needed accurately assess the operation of the facility as it relates to areas that can not be inspected by the ADEQ inspector. The inspection required by Regulation 22.522 must be performed by a Registered Professional Engineer and includes detailed engineering calculations.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-12</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.522(a) - This commenter requests the requirement for a registered professional engineer be stricken from subsection (a) and placed, if specifically required by Arkansas Code, in subsections (a)(l) through (a)(11).

**Response:**

ADEQ disagrees. Each of the items required to be submitted as part of an Annual Engineering Inspection Report are required to be certified and submitted by a Registered Professional Engineer.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-13</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.522(a)(3) and (4) - This commenter requests the Department explain how compliance with fill progression can be documented, other than by the contour map required under 22.522(a)(5). The inclusion of 522.(a)(3) implies that something additional is required.

**Response:**

ADEQ disagrees. Regulation 22.522(a)(3) requires that a Registered Professional Engineer review the fill progression of the facility as compared to the permitted fill progression and certify that the fill progression is in compliance with that permitted.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-14</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.522(a)(4) - This commenter requests clarification of how the permittee and the entity preparing the engineering report could comply with this requirement for <u>documentation</u> of compliance with the regulation, the permit conditions and the approved operating plan.					
<b>Response:</b>					
ADEQ disagrees. Regulation 22.522(a)(4) requires that a Registered Professional Engineer review the operation of the facility as compared to the Regulation, Solid Waste Permit and Operating Plan and Narrative and certify that the operation of the facility is in compliance. Documentation would include but not be limited to records maintained by the facility, photographs and field verification by the Engineer.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ALB-15</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.708(a) - This commenter requests the phrase "or Class 3N" be inserted after "Class I" in this section. There is no reason to limit this applicability to Class 1 units.					
<b>Response:</b>					
ADEQ disagrees. Applicability of this entire chapter is limited to Class 1 Landfills in Regulation 22.701. Class 3N landfills may be allowed to take any of the special materials if specifically authorized by the Solid Waste Permit.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ALB-16</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.1101,22.1102,22.1103,22.1104 - This commenter requests these sections be moved to subsections within 22.303 as they are pre-permit pre-construction requirements and should be placed with the other pre-permit pre-construction requirements.					
<b>Response:</b>					
ADEQ does not agree with the comment. The organization of the Regulation in regard to this section is for clarity. All geotechnical and geologic requirements are consolidated into one chapter of the Regulation. Regulation 22.303 references the applicable sections of the regulation in regard to geotechnical and geologic					

requirements.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-17</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>				
2.1201(f) - This commenter request the phrase "and is registered in the state of Arkansas" be stricken from this paragraph. There is no system for registering scientists in Arkansas at the present time.				
<b>Response:</b>				
<p>The state of Arkansas has professional Registration Boards for both geologists and engineers. Professional Geologists and Engineers are the “scientists” which gather and analyze the data necessary to insure compliance with Regulation 22 and the individual permit conditions for all classes of landfills. Each of these boards of registration has rules concerning the types of work which may be performed by each discipline. Work performed by individuals which falls under the practice of “geology” requires certification of those documents by a Registered Professional Geologist. The work performed by individuals which falls under the practice of “engineering” requires the certification of a Professional Engineer. This required professional certification assures the work presented to the SWMD is prepared by persons who are qualified according to standards adopted by their respective boards of registration. ADEQ SWMD will continue to require these registered professionals to submit plans, specifications and reports which are properly “certified” by the respective boards of registration.</p>				
<b>Notes</b>				

<b>COMMENT ID:</b>	<b>ALB-18</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>				
22.1203(b) - This commenter requests the phrase "Appendix 1 parameters" be deleted and the phrase "Appendix 1 parameters for Class 1 landfills and Appendix 3 parameters for Class 3 landfills" be substituted. The list of Appendix 3 parameters was negotiated with the Solid Waste Division prior to the inclusion of Class 3 landfills in Regulation 22. This negotiation was critical to the negotiations leading up to industry's support of the adoption of Regulation 22.				
<b>Response:</b>				
<p>ADEQ disagrees. Regulation 22.1203(b) requires ground water sampling methods for Appendix 1 parameters to be in accordance with approved laboratory analytical methods. It does not stipulate Class 3 landfills must exclusively sample for Appendix 1 parameters. Regulation 22.1204 (a)(1) under Detection Monitoring allows the Director to delete any Appendix 1 or 3 monitoring parameters for a landfill if it can be shown the removed constituents are not reasonably expected to be derived from or found in the waste contained in the</p>				

unit. Each Class 1 and 3 facility is required to have an approved Sampling and Analysis Plan (SAP) for their facility. An operator is given the option to tailor the required sampling parameters outlined in the SAP for the individual facility or may modify the an existing SAP by providing justification to the ADEQ as to which Appendix 1 or 3 constituents a facility should sample for. It is the opinion of the ADEQ that Regulation 22 provides sufficient flexibility for establishing appropriate sampling parameters at each Class 1 or Class 3 facility therefore, it is not appropriate to add the requested language in the regulation.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-19</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.1203 - This commenter requests ADEQ delete this section which is the same (but different) from the sampling and analysis plan required at 22.1204					
<b>Response:</b>					
ADEQ disagrees. Regulation 22.1203 gives the basic outline of the requirements for a Sampling and Analysis Plan. Regulation 22.1204(j) provides details for the submitting a Sampling and Analysis Plan.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ALB-20</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
22.1203(j) - This commenter requests ADEQ delete the sentence "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." There is no need for this requirement, which is just another unnecessary cost to be absorbed by the regulated community. If the sampling and analysis plan does not meet the requirements of Regulation 22, it must be rejected by ADEQ whether it has been certified or not. The responsibility for determining adequacy cannot be passed to a "certifying" individual or organization.					
<b>Response:</b>					
ADEQ disagrees. It is the opinion of ADEQ that all reports required under the Sampling and Analysis Plan (SAP) require certification by a "qualified ground water scientist". The Board of Registration for Professional Geologists has determined Ground Water Monitoring Reports (GWMR's) previously submitted to them for review were "geologic reports" which contained "geologic interpretations" and as such must be stamped and certified by a Professional Geologist registered in the state of Arkansas. This requirement is mandated by A.C.A. 17-33-302 and is in keeping with the "Rules" of the Board. ADEQ is trying assuring compliance with the requirements of Act and being consistent with the entire regulated community when applying this requirement. It is inappropriate to have some facilities which provide the required certification					



documentation while other facilities do not. ADEQ is striving for a "level playing field" concerning proper certification of documents submitted by the regulated community". The certifying professional does retain responsibility for the accuracy of the information presented as does the facility that presented it.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-21</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22. 1204(a)(2) - This commenter requests the phrase "...of the heavy metals (constituents 1-15 in Appendix 1 to this part), if the alternative..." be altered to read phrase "...of the heavy metals, if the alternative..." There is no reference to heavy metals in reference to Appendix 3.

**Response:**

ADEQ disagrees. The proposed change is not recommended. ADEQ does recommend adding the words "Class 3" to the phrase, "inorganic releases from Class 1 and Class 3 landfill(s) to the ground water."

**Notes**

<b>COMMENT ID:</b>	<b>ALB-22</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.1204(c) - This commenter requests the word "indicator" be inserted before the phrase "constituents listed in Appendix 1 or Appendix 3..." This section deals with indicator parameters.

**Response:**

ADEQ disagrees. It is the opinion of ADEQ not all parameters included in Appendix 1 and 3 are indicator parameters. Therefore, inserting the word "indicator" may in effect allow a facility to limit the sampling parameters utilized in determining whether or not a Statistically Significant Increase (SSI) over back ground has occurred at a particular facility. The facility has the option of developing an alternate list of parameters tailored to their facility for which possible SSI's can be determined. The inclusion of the word "indicator" in this section is not considered necessary.

**Notes**

<b>COMMENT ID:</b>	<b>ALB-23</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
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**Comment :**

22.1205(b) - This commenter requests 22.1205 be stricken as written. 22.1204(e)(2)(7) requires the submission of a contingency plan that addresses the elements of the "Assessment Monitoring Program" found in 22.1205. Since the Contingency Plan submitted under 22.1204(e)(2)(7) has already been approved by this time, there is no need to submit an "Assessment Monitoring Program" under 22.1205. The Department can declare an otherwise acceptable (and previously accepted) "Contingency Plan" inadequate under unforeseen circumstances.

**Response:**

ADEQ disagrees. Regulation 22.1204(e)(2)(7) requires the submission of a contingency plan that addresses the elements of the "Assessment Monitoring Program" found in 22.1205. However, the required contingency plan would be an outline which provides the procedures and guidelines an operator would need to follow if and when an SSI has been detected. Those guidelines should conform to the requirements set forth in Regulation 22.1205. Regulation 22.1205(b) sets forth the required sampling frequency if and when a facility is required to be placed into Assessment Monitoring. Regulation 22.1205 does not require a facility submit an "Assessment Monitoring Program", it sets forth the requirements for administering and placing a facility into assessment monitoring. Again, the contingency plan referenced in 22.1204(e)(2)(7) should follow the requirements of 22.1205. It is the opinion of the ADEQ that deleting this section of the regulation is not appropriate.

**Notes**

COMMENT ID:	ALB-24	AGREE	DISAGREE	X
<p><b>Comment :</b></p> <p>22.1205(b) - This commenter reiterates the previous comment. This paragraph does not make sense to this commenter as proposed. The approved contingency plan required under 22.1204(e)(2)(7) will already specify that if a statistically significant increase in a detection monitoring parameter occurs: (1) The well system demonstrating the increase will be sampled to validate the original analysis; (2) if validated as a significant increase when compared to the background wells) the well will be sampled for Appendix 2 constituents; (3) if any Appendix 2 constituent is detected, an analysis of the probable source of the constituent will be proposed; (4) a means of determining this conclusion will be proposed; (5) the source of the constituent will be demonstrated; (6) if the landfill is not the source, or if the concentration of detected constituent is below the level of regulatory concern, the permittee will return to detection monitoring. If the source of the contaminant is the landfill, the permittee will have to propose a corrective action plan, depending on the nature of the threat of regulation 22. This commenter urges ADEQ to explore the flow chart approach that IS results and outcome driven. An outcome-based approach (i.e., Figure 12-1) would allow ADEQ the flexibility ADEQ needs in unforeseen situations. Such flexibility is often lacking in the traditional narrative approach to complex situations.</p>				
<p><b>Response:</b></p> <p>ADEQ disagrees. Regulation 22.1205(b) sets forth the requirements for sampling frequency if and when a facility moves into Assessment Monitoring. The deletion of this paragraph is not appropriate. The contingency plan referenced in 22.1204(e)(2)(7) has nothing to do with the required sampling frequency</p>				

outlined in 22.1205(b) except that the contingency plan will be required to meet the sampling frequency requirements of this section. It is the opinion of the SWMD, deleting this section of the regulation is not appropriate. ADEQ believes there should be limited flexibility in regards to placing a facility into Assessment Monitoring in Regulation 22

**Notes**

<b>COMMENT ID:</b>	<b>ALB-25</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Appendix 3 is missing. This commenter requests Appendix 3 be replaced without change from the existing Regulation 22.					
<b>Response:</b>					
ADEQ agrees. Appendix 3 will be included in the final draft of Regulation 22. Minor changes have been made to the document to reflect changes in U.S. EPA the allowable Maximum Concentration Levels (MCL's) for some constituents referenced in Appendix 3.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>WM-1</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Reg 22.413-Cover Material Requirements; (c) Interim Cover Material Requirements: The proposed regulation should be expanded to allow for alternate materials upon Department approval. In addition, the time frame for application of interim cover should be extended to 180-days. The USEPA guidance documents and Sub-Title D regulations do not have any time frame for interim cover requirements. Due to seasonal conditions, an extended time frame is appropriate.					
Suggested language should be as follows:					
(c) Interim Cover Material Requirements - A compacted layer of cover soil of sufficient quantity to ensure there is no exposed waste, but not less than twelve (12) inches in total thickness including the six inches of daily cover (or an approved alternate material), shall be applied upon surfaces that will not receive an additional application of waste of final cover within 180 days.					
<b>Response:</b>					
ADEQ agrees and will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

COMMENT ID:	WM-2	AGREE	X	DISAGREE	
<b>Comment :</b>					
Reg 22.425-Landfills in Boone And St. Joe Formations; (c)(3) Liner Systems: The proposed regulation states a requirement for the soil component of the composite liner system in excess of the soils used in other landfills. Without a proper review and characterization of the available soil types, this regulation could exclude the use of all locally available soils for liner construction. There does not appear to be any technical justification for requiring a greater fines content for the liner and final cover soils. As long as the soil meets the standards for liner construction and meets the requirements for hydraulic conductivity, it should be considered acceptable. A greater fines content does not in of itself provide any greater quality of liner construction.					
<b>Response:</b>					
ADEQ agrees and will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

COMMENT ID:	WM-3	AGREE	X	DISAGREE	
<b>Comment :</b>					
Reg 22.609-Cover Material Requirements; (b) Cover Thickness: The time frame for application of additional cover should be extended to 180-days. The USEPA guidance documents and Sub-Title D regulations do not have any time frame for cover requirements at Class 4 (C&D) landfills. Due to seasonal conditions, an extended time frame is appropriate. Suggested language should be as follows:					
(b) Cover Thickness - A compacted layer of cover soil not less than twelve (12) inches, sufficient to ensure there is not exposed waste including the six (6) inches of daily cover required under Reg.22.609(a) shall be applied upon surfaces that will not receive an additional application of waste of final cover within 180 days.					
<b>Response:</b>					
ADEQ agrees and will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

COMMENT ID:	WM-4	AGREE	X	DISAGREE	
<b>Comment :</b>					
Regulation 22.1203-Ground Water Sampling and Analysis Requirements; (e) Background Water Quality: The proposed regulation adds a requirement for eight (8) independent samples from each well. The determination of background water sampling should be site specific and approved as part of the sampling and analysis plan for any facility.					

**Response:**

ADEQ agrees. Regulation 22.1203(e) based on comments received, will be changed to reflect the original language found in this paragraph which required four (4) independent samples from each well. In regards to the other comment, the ADEQ acknowledges site specific conditions may warrant modifying how background water quality is established at a particular site. If this is the case, the SWMD would consider an alternate approach, if necessary based on justification provided by the facility operator. Otherwise, it is the opinion of ADEQ, the establishment of background water quality should involve the same procedures for each Class 1 and Class 3 facility to be consistent.

**Notes**

<b>COMMENT ID:</b>	<b>WM-5</b>	<b>AGREE</b>	<b>DISAGREE</b>	<b>X</b>
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**Comment :**

Reg 22.1204-Detection Monitoring Program; (b) Sampling Frequency: The proposed regulation adds a unique requirement of quarterly monitoring frequency for landfills located in the outcrop of the Boone and St. Joe geologic formations. The proposed insert is written to impact only one exiting landfill. It is written to be all inclusive and does not take into account any site specific location or design/operational features for landfills within the Boone and St. Joe formations that may not be of unique concern from a groundwater monitoring or potential impact issue. The correct manner to address site specific issues or concerns is in the acceptance and/or approval for any groundwater sampling and analysis plan which is based on the unique location, design and operating standards for any landfill.

**Response:**

ADEQ disagrees. ADEQ believes the requirement for quarterly sampling for Class 1 or Class 3 facilities located on the outcrop area of the Boone and St. Joe Formations is appropriate and more protective of karst environments. Ground water flow beneath karst terrains can be rapid at times and it is felt quarterly ground water monitoring requirements would be more protective of the environment in and around these facilities. ADEQ recommends one minor change to the first sentence in the first paragraph. The change the first sentence to read, "paragraph (a)(2) to paragraph (a) ."

**Notes**

<b>COMMENT ID:</b>	<b>WM-6</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>
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**Comment :**

Reg 22. 1204-Detection Monitoring Program; (b) Sampling Frequency: The proposed regulation adds a requirement for eight (8) quarterly samples during the first year of sampling for each well. Not only is this not practical, but the existing regulation was adequate (i.e., allowing for four (4) samples within the first semi-annual groundwater sampling event). The existing language should be retained and only a suggestion to

add language about including the requirement in the site specific sampling and analysis plan would be appropriate.

**Response:**

ADEQ agrees. See previous Comment GEC-2; Based on this and additional comments received, Regulation 22.1203(e) will be changed to reflect the original language found in this paragraph which required four (4) independent samples from each well. The SWMD recommends the requested changes be made to this section of the regulation.

**Notes**

<b>COMMENT ID:</b>	<b>WM-7</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

General comment that there is no language about the utilization of the research, development and demonstration (RD&D) permits recently issued by the USEP A. Will the Department consider these on an individual basis, or will follow-up regulations and/or guidance be issued?

**Response:**

ADEQ agrees that research, development and demonstration permits need to be incorporated into Regulation 22. However this change was not initiated as part of the rule making petition and was not included in departments review of the financial impact of the proposed changes. This change should be made in future Regulation 22 revisions.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-1</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

In Chapter 1 of the draft regulation a definition for incremental filing should be added.

**Response:**

ADEQ will incorporate a definition of incremental financing into the Regulation. Please refer to Comment AEF-15 for a more detailed response.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-2</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

The first sentence of Section 22.201 (a) should be restored to read as follows: "In accordance with A.C.A. § 8-6-701 et seq. and except as provided by A.C.A. § 8-6-723 the boundaries of regional solid waste management districts shall be approved by the Commission." This is needed for coherence in this chapter.

**Response:**

ADEQ will incorporate the suggested language into the Regulation.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-3</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Section 22.201 (c), Solid Waste Management Plan, should be restored, in part, to read as follows: "Each regional solid waste management board shall develop a regional solid waste management plan to provide for a solid waste management system within the district. The plan shall be submitted to the Department for approval." This is needed for coherence in this chapter.					
<b>Response:</b>					
ADEQ will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-4</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
The deleted Section 22.201(k), the Phase out of "Green Box" Systems, should be restored in its entirety except for the last sentence. The last sentence references the 1995 adoption of Regulation 22, so leaving it in would cause confusion. This provision should be moved and incorporated in Regulation 22.901 which addresses transfer stations. This subsection should also be amended to require: 1) restricted access to "green boxes"; 2) attended ingress and egress; and 3) the rejection of compacted waste.					
<b>Response:</b>					
ADEQ will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-5</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

The deleted Section 22.203, Licensing Haulers of Solid Waste, should be restored and renumbered. The Districts license haulers and this provision sets forth the procedures for licensing. This language is not addressed in any other regulation.

**Response:**

Licensing of haulers of solid waste is not addressed in other regulations so it would be a mistake to delete these provisions from Regulation 22. It was not the intent to deregulate haulers of solid waste.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-6</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

The renumbered Section 22.203, Certificate of Need for Landfills and Transfer Stations, subsection (c)(4) should be revised to read as follows: "The need for a landfill application based upon the district's remaining capacity that is currently permitted for operation, but in no event shall the district's remaining permitted capacity exceed thirty (30) years unless the city of government within whose jurisdiction the proposed landfill is located authorizes approval of the excess capacity through the adoption of a resolution." This change is necessary for clarification.

**Response:**

ADEQ will incorporate the suggested language into the Regulation.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-7</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

In Regulation 22.302, Pre-Application Procedures, subsection (c) the words "into unpermitted areas" should be removed. This verbiage is confusing.

**Response:**

ADEQ will incorporate the suggested language into the Regulation.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-8</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

An addition should be made to Regulation 22.303, General Application Requirements, to describe the method to be used to identify wells.

**Response:**

ADEQ will add the phase by visual inspection, review of historical records, and survey of surrounding residents.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-9</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

A major modification is redefined under Regulation 22.308, Modification of Permits, as (1) an increase often percent (10%) or greater in the total permitted capacity of the solid waste disposal or processing facility. This should be clarified to read as follows: "An increase of ten percent (10%) or greater in the total remaining permitted capacity of the solid waste disposal facility." Alternatively, it is suggested that there be a limit under this provision for a one-time enlargement of a facility for an area less than ten percent (10%) of the permitted capacity. Any additional enlargements should be treated as major modifications.

**Response:**

The Regulation will be modified to give guidance that any increase of 10% or greater of the permitted landfill disposal capacity will be considered major. In addition more than 1 increase of the permitted landfill capacity less than 10% will be classified as major and any increase in capacity that results in more than 18 months of additional site life will be classified as major. In all cases, the provisions and requirements of Regulation 22.203 shall still apply.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-10</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

Regulation 22.415, Explosive Gases Control, subsection (a) (1) needs to be corrected as follows: "The concentration of methane gas generated by the facility does not exceed twenty five percent (25%) of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and..." In the existing proposed version the written numbers and spelled numbers do not match.

**Response:**

ADEQ will incorporate the suggested language into the Regulation.

**Notes**

<b>COMMENT ID:</b>	<b>ADEQ-11</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Regulation 22.706 should be renamed as Tires. This change recognizes that ADEQ does not regulate farm implement tires. Subsections 22.706 (b), (c) and (d) should be deleted. These provisions are now in Regulation 14.					
<b>Response:</b>					
ADEQ will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-12</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
In Regulation 22.11 02( d) the phrase "qualified ground water scientist" is used. This needs to be better defined.					
<b>Response:</b>					
This response was given in GEC-1. The definition of “qualified ground water scientist“ has been expanded to include geologists. The definition has been strengthened by requiring any qualified groundwater scientist to be a Registered Professional in the state of Arkansas. The certifying professional must be able to demonstrate they have sufficient training in geology, geohydrology or ground water hydrology that enables the individual to make sound professional judgements regarding ground water monitoring. It is the opinion of ADEQ staff, restricting the qualified ground water scientists exclusively to Registered Professional Geologists is too restrictive. Geologists and engineers, provided they are Registered Professionals in the state of Arkansas may both be qualified to submit documents to the agency. However, ADEQ reserves the right to request supporting documentation from a Registered Professional to verify their qualifications to submit work as a “qualified ground water scientist. In addition, ADEQ reserves the right to submit any documents received by the agency to the Board of Registration for Professional Geologists for a determination on the certifying individual’s credentials to make “geologic interpretations” and the appropriateness of submitting documents to the agency as a “qualified ground water scientist.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-13</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
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**Comment :**

Regulation 22.1203, Ground Water Monitoring Systems, should be amended to require the owner or operator to submit groundwater monitoring reports to the Director of ADEQ.

**Response:**

The current draft of Regulation 22 does not specifically require the submittal of a Ground Water Monitoring Report (GWMR) for each Class 1 and 3 facility performing ground water monitoring. It is recommended a new paragraph be added to the regulation requiring the submittal of a GWMR. The new paragraph would be placed in section 22.1203(k) and would be titled "Ground Water Monitor Reporting". This section would contain the following language,"

The owner or operator of a Class 1 or 3 facility shall submit to the Director a Ground Water Monitoring Report prepared and certified by a qualified ground water scientist which contains a determination of the direction of ground water flow across the site based on water level measurements taken during the most recent sampling event at the facility and potentiometric surface map showing the locations of the monitor wells at the site. The permittee shall also provide a determination of the rate of ground water flow across the site. The facility must in accordance with the approved Sampling and Analysis Plan (SAP) determine if a Statistically Significant Increase has occurred for any constituent detected above established background concentrations at the facility, based on the analytical results from the most recent sampling event. The facility must provide appropriate documentation of SSI's in the GWMR.

The operator shall analyze the monitoring data collected and provide a discussion in the GWMR on the findings and conclusions concerning ground water quality at the facility. If an SSI is confirmed, the permittee must notify the Department in accordance with Regulation 22.1204(c). The GWMR shall be submitted to the SWMD within 90 days from the date of the last recorded sampling event.

**Notes**

COMMENT ID:	ADEQ-14	AGREE	X	DISAGREE	
<b>Comment :</b>					
In Chapter 14 a provision should be added to require the ADEQ to be named as a party in the instrument if the owner or operator uses a trust fund agreement to fund financial assurance.					
<b>Response:</b>					
It is the understanding of ADEQ that all financial assurance mechanisms should be worded at the benefit of ADEQ. Therefore, a comment should be inserted under Regulation 22.1405 - Allowable Mechanisms that states, "Financial assurance required by this chapter should be filed on forms prescribed on forms developed and provided by the Department."					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-15</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Regulation 22.706 should be renamed as Tires. This change recognizes that ADEQ does not regulate farm implement tires. Subsections 22.706 (b), (c) and (d) should be deleted. These provisions are now in Regulation 14.					
<b>Response:</b>					
ADEQ will incorporate the suggested language into the Regulation.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>ADEQ-16</b>	<b>AGREE</b>	<b>X</b>	<b>DISAGREE</b>	
<b>Comment :</b>					
Minor changes may need to be made to Appendix 1 and/or Appendix 2 if the information is not current as of 2004.					
<b>Response:</b>					
Changes to the Regulation 22, Appendix 3 for the U.S. EPA Maximum Concentration Levels (MCL's) have been included in the re-write based on changes made previously to the MCL's by EPA. These changes update the current version of Appendix 3 provided in Regulation 22.					
<b>Notes</b>					

<b>COMMENT ID:</b>	<b>RM-1</b>	<b>AGREE</b>		<b>DISAGREE</b>	<b>X</b>
<b>Comment :</b>					
Prior to the 1993 session of the Arkansas General Assembly, the ADEQ legal staff took the position that the commission could adopt regulations as stringent as it wished so long as the EPA had not "occupied the field", i.e., if EPA had no regulation which addressed a particular issue or requirement, the commission could adopt regulations in addition to EPA without conducting an Economic Impact Analysis. It was the intent of act 1264 of 1993 to end this practice and out of a sense of fairness, I supported HB-1988 which became act 1264 of 1993 and is cited as statute 8-1-203, sections B, C, and D.					
Having seen no Environmental impact statement (EIS) on proposed changes in the commission's regulations 14 and 22, I must raise the following question.					
Has and EIS been prepared? If not, why not? If an EIS has been prepared, why has a copy not been provided					

to the Commission on the legislative committee? Is it the responsibility of ADEQ or the commission to prepare an EIS when one is required? Who has the expertise and/or the money necessary to prepare an EIS? Should the preparation of an EIS be contracted to an independent contractor?

It is my belief that there are changes proposed in both regulations 14 and 22 that, if adopted, will have an economic impact without weighing that against the environmental gain, of which I believe there to be none.

We must always give serious consideration as to whether proposed regulatory changes will cause added costs to be placed on the people of our state. This is particularly important when such changes provide absolutely no added protection to the environment changes that effect no “environmental benefit” seems to one to be doing things just because we can instead of or rather than because we should. When changes are made to accommodate or benefit or give more power to the ADEQ at the expense of the public, industry, and commerce with no “environmental benefit” we are going down the wrong road. When such an attempt is made, it is imperative that an EIS be conducted. It is my belief that the members of the legislature should and will strenuously object to changes that, if adopted, violate act 1264 of 1993.

**Response:**

ADEQ disagrees. Act 1264 does not require an Economic Impact Analysis unless a change to an existing rule or regulation is more stringent than the federal requirements. ADEQ has determined that all changes proposed in the revision to Regulation 22 will have a minimal economic impact on the regulated community. This does not include the economic impact of requirements in the Regulation that have not been changed by this revision to the Regulation

**Notes**

COMMENT ID:	RM-2	AGREE		DISAGREE	X
<p><b>Comment :</b></p> <p>For example: Removing section 22.708 from Regulation 22 appears to favorably impact a landfill in El Dorado while leaving all other landfill operators “lost at sea” as to what are acceptable levels of soil contamination by petroleum products prior to disposal or other purposes to which it may be put? It appears that this change will leave other landfill operators vulnerable to the whims of the Solid Waste Division enforcement section as to what is acceptable.</p>					
<p><b>Response:</b></p> <p>ADEQ disagrees. Please see the reponse regarding this issue in Comment NS-1.</p>					
<p><b>Notes</b></p>					