

PROPOSED RULE

Arkansas Pollution Control & Ecology Commission

Regulation No. 23 (Hazardous Waste Management)

February 22, 2002

**Arkansas Pollution Control and Ecology Commission Regulation No. 23
(Hazardous Waste Management)**

DEPARTMENT: Environmental Quality, Hazardous Waste Division

ACTION: Proposed Rule

SUMMARY: The Arkansas Pollution Control and Ecology Commission is today revising APC&EC Regulation No. 23 (Hazardous Waste Management). The Commission is adding the Mid-South Reclamation Industries, Inc. site to the Arkansas Remedial Action Trust Fund Priority List for site cleanup.

PUBLIC NOTICE: A public hearing will be held at Little Rock the week of March 25, 2002, or the week of April 1, 2002, at the offices of the Arkansas

FOR FURTHER INFORMATION, CONTACT: For general information, contact the Department offices at (501) 682-0744. For information on these revised rules and Regulation No. 23, contact Tammie Hynum, Hazardous Waste Division, (501) 682-0856.

STATEMENT OF BASIS AND PURPOSE

The Arkansas Department of Environmental Quality (ADEQ) maintains and administers a hazardous waste management

program to implement the provisions of the Arkansas Hazardous Waste Management Act (Arkansas Code, Annotated,

§§ 8-7-201 *et seq.*) and to provide a program which is equivalent in force and effect to the Federal program as

established by the Resource Conservation and Recovery Act, as amended, including but not limited to the Hazardous

and Solid Waste Amendments. Additionally, ADEQ administers the State's hazardous substance site cleanup program

pursuant to the Remedial Action Trust Fund Act (Arkansas Code, Annotated, §§ 8-7-501 *et seq.*) for the purpose of

investigating, controlling, abating threats to human health and the environment posed by hazardous substance sites.

The background, purpose, and specific need for each individual revision is discussed separately in the section below.

SUMMARY OF REVISIONS

a. Federal Rules incorporated in the revised Regulation No. 23:

(1) NONE

b. State-only Rules incorporated in the revised Regulation No. 23:

(Revised 2/22/2002)

THE PURPOSE OF
THIS AMENDMENT
IS TO:

- Add the Mid-South Reclamation Industries, Inc. site near

Smackover, Union
County, to the Remedial
Action Trust
Fund Priority List for
remediation.

2

APC&EC Regulation No. 23

February 22, 2002 Proposed Rule

(1) **Section 27(b)(2)** is amended to add the Mid-South Reclamation Industries site to the Remediation category. This process initiates the required actions to provide funding for remediation of contamination resulting from the releases of hazardous substances at the above-named site in Union County in order to contain and abate a threat to the environment, human health and the public's safety resulting from these releases.

Mid-South Reclamation Industries, Inc. (hereinafter "Mid-South") is an inactive tire reclamation facility located at 2 Kenova Road in Smackover, Union County, Arkansas. Waste tires were brought to the site and stored until they could be de-beaded and shredded. The shredded tires were then sold for fuel, or reduced further and sold as rubber turf. The facility is privately owned by Drew Sheppard and Courtney Sheppard via a parent company, Sheppard Land and Timber Company. Sheppard Land and Timber owns 85% of Mid-South stock.

In April 1992, Mid-South experienced a fire in an unpermitted storage area used for tires and shredded rubber. This fire burned for several weeks before going out. A subsequent ADEQ Solid Waste Division inspection revealed that Mid-South was operating without the necessary permits for the burning storage area. ADEQ staff then began work to attempt to bring the facility into compliance.

ADEQ conducted routine compliance inspections at Mid-South beginning in June 1992 and Mid-South received a waste tire processing permit on September 24, 1992. Mid-South operated in continuing noncompliance with the requirements of APC&EC Regulation No. 22 (Solid Waste Management) throughout the operating history of the facility, from approximately 1992 until the facility ceased active operations in 1998. The company submitted a Corrective Action Plan to ADEQ in October 1997, with a suspense of April 30, 1998 to complete the actions called for in the plan.

On April 30, 1998, Mid-South experienced another fire in its permitted unit. This fire spread to the unpermitted area on May 1, 1998. The Smackover and Norphlet fire departments responded to these fires, but Mid-South was unable to pay the costs of extinguishing the fires. ADEQ officials were notified and retained services to monitor and respond to the fire. Several attempts were made using conventional fire-fighting techniques and services; but were unsuccessful in extinguishing the fire. These efforts

exhausted the emergency funds authorized by the Director for response actions. Due to the large quantity of tires involved, their capacity to sustain the fire, and their physical location, it was determined that the fire would have to burn itself out over an estimated two to three month time period. The site was visually monitored during this time by the fire departments and ADEQ inspectors.

ADEQ took enforcement action against Mid-South by issuing a Notice of Violation (NOV) on May 14, 1998. This NOV found reasonable grounds that Mid-South had violated the provisions of APC&EC Regulation No. 22, and sought civil penalties in the amount of \$150,200. Mid-South began negotiations with ADEQ to resolve this NOV. On July 14, 1998, the U.S. Environmental Protection Agency (U.S. EPA) Region VI was notified by concerned citizens in the Smackover area that the April fire at the Mid-South site was still burning. EPA tasked its Superfund Technical Assistance and Response Team to conduct an emergency response to extinguish the fires. The Mid-South site was added to EPA's CERCLIS list on July 16, 1998 and emergency removal activities were initiated in order to extinguish the smoldering fire. All emergency response activities at the site were completed by July 24, 1998.

ADEQ and Mid-South entered into a Consent Administrative Order (CAO), LIS No. 98-066 as a compromise to resolve the issues charged in the May 1998 NOV. Mid-South agreed to cease receipt and storage of tires at their facility, to submit a corrective action plan to ADEQ for approval within 60 days, and to clean up the site within 120 days of approval of the corrective action plan. Mid-South also agreed to pay a civil penalty of \$25,000, clean up the site within 90 days, and sell the property with the proceeds of the sale to be used to implement a Supplemental Environmental Project designed to advance environmental interests. Failure to comply with the corrective action plan would cause Mid-South to forfeit a letter of credit issued by the First National Bank of El Dorado, Arkansas, in the amount of \$100,000 at which time ADEQ would apply these funds for cost recovery of remediation at the facility. Mid-South signed the corrective action plan on or about October 28, 1998, with an effective date of December 12, 1999.

Mid-South defaulted on the conditions of the CAO, and on April 1, 1999, ADEQ filed suit in civil court to compel Mid-South to comply with the conditions of the order. Litigation in this matter is still pending as of January 2, 2002.

ADEQ conducted a site investigation at the Mid-South facility in April, 2001 to determine continuing risks posed by the conditions on the site. Toxic metals and cyanide compounds were detected in surface soil and sediment samples during the April 2001 investigation. The analytical results reported elevated levels of arsenic, barium, cadmium, chromium, cobalt, copper, iron, lead, manganese, nickel, sodium, thallium, zinc, and cyanide at approximately

three times background levels.

Little or no clean-up has been accomplished since the 1998 fires were extinguished. Access to the site is currently uncontrolled. Approximately 36,000 cubic yards of shredded tire and rubber material and nearly 8,000 intact tires remaining at the site continue to pose an imminent risk for another tire fire. Such a fire would endanger human health and the environment by releasing hazardous substances from the tire residues to the soil and surface waters as well as emitting air pollutants from the burning tire material.

Efforts to compel the responsible parties to address

3

APC&EC Regulation No. 23

February 22, 2002 Proposed Rule

remediation of the Mid-South site have garnered little result. Preliminary costs for cleaning up the site have been estimated at approximately \$1.03 million, which greatly exceeds the amount of financial assurance posted by Mid-South. The Department is therefore seeking to address and clean up the site under provisions of the Arkansas Remedial Action Trust Fund Act (RATFA).

Provisions of the Arkansas Remedial Action Trust Fund Act (Arkansas Code, Annotated, § 8-7-5 and APC&EC Regulation No. 23, § 26(b)) require that before any moneys from the Remedial Action Trust Fund are expended on a hazardous substance site, that site must be listed on the Trust Fund Priority List in Regulation No. 23, § 27. This rulemaking proposes to add the Mid-South facility to the Remedial Action Trust Fund Priority List in order to fund a timely response to the hazard posed by current conditions at this site.

STATEMENT OF FINANCIAL IMPACT

Revisions to state provisions of Regulation No. 23 include the listing of one site to the Remediation Category of the Hazardous Substance Remedial Action Trust Fund Priority List. Currently it is estimated that the response actions will cost approximately \$1.03 million dollars. These cost would be incurred by the Trust Fund and subsequently actions would be initiated against the responsible parties to recover the costs expended.

SEVERABILITY

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

TEXT OF THE PROPOSED RULE:

Revisions are made to the text of Regulation No. 23 (Hazardous Waste Management), dated December 7, 2001, as follows: (Specific changes to current regulatory language are highlighted in **bold** text:

18. **Section 27(b)(2)** is revised to read as follows:

Section 27.

HAZARDOUS SUBSTANCE REMEDIAL ACTION TRUST FUND PRIORITY LIST

(b) *State Priority List (SPL) Sites:*

(1) *****

(2) *Remediation Category*

(A) Vertac Chemical Corporation,
Jacksonville

(B) Benton Salvage, Benton

(C) Garland County Industrial Landfill,
Hot Springs

(D) Utilities Services, Inc., Pine Bluff

(E) Jimelco, Little Rock

(F) Rixey Iron & Metals Company, North
Little Rock

(G) Griffing Railway Repair, El Dorado

(H) Leachville Metal Plating, Leachville

(I) Ouachita-Nevada Wood Treaters,
Reader

(J) Plainview Lumber Company,
Plainview

(K) R&P Electroplating, Fayetteville

(L) Baird Manufacturing, Inc., Clarendon

(M) Amity Lacquer Paint and Chemical
Manufacturing Company, Amity

(N) Red River Aluminum, Stamps

**(O) Mid-South Reclamation Industries,
Smackover**