

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 23, HAZARDOUS )  
WASTE MANAGEMENT )**

**DOCKET NO. 03-001-R**

**PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 23,  
HAZARDOUS WASTE MANAGEMENT**

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or the “Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 23, Hazardous Waste Management, states:

1. The U.S. Environmental Protection Agency has promulgated several changes to the hazardous waste management regulations (40 CFR Parts 260-279) published in the *Federal Register* between August 10, 2001 and December 31, 2002 which affect the hazardous waste management program implemented by the Department pursuant to the Hazardous Waste Management Act and the Commission’s Regulation No. 23. In addition to these revisions the September, 1999 federal MACT standards are proposed for final incorporation into the Regulation. The Department proposes this rulemaking primarily to make the provisions of Regulation No. 23 consistent with and no less stringent than the revised federal hazardous waste management program.
2. The proposed regulatory amendments precipitated by revisions to the federal hazardous waste management program involve the following areas:

(A) *NESHAP: Hazardous Air Pollutant Standards for Combustors*, published at 64 FR 52828-53077 on September 30, 1999 and as amended November 19, 1999, at 64 FR 63209-63213. This rule promulgated the final Maximum Achievable Control Technology (MACT) standards under the federal Clean Air Act for incinerators, boilers, industrial furnaces, and other treatment units burning hazardous waste. This rule was initially proposed for adoption in 2001, however federal litigation led to the rule being vacated and revised. This proposal incorporates the finalized provisions of this 1999 rule into Regulation No. 23, as well as subsequent amendments to the MACT provisions, which are discussed below.

(B) *Correction to the Hazardous Waste Identification Rule*

*(HWIR); Revision to the Mixture and Derived-From Rules*

*(Mixture and Derived-From Rules Revision II)*, published at 66 FR 50332-50334 on October 3, 2001. Specifically, this rule clarifies that mixtures of certain excluded wastes (commonly referred to as Bevill wastes) and listed hazardous wastes that are hazardous solely because they contain a characteristic of ignitability, corrosivity, and/or reactivity are exempt once the hazardous characteristic is removed.

(B) *Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; and Land Disposal Restrictions for Newly Identified Wastes*, published at 66 FR 58258-58300 on November 20, 2001, and subsequent correction published at 67 FR 17119-17120 on April 9, 2002.

This rule adds three inorganic chemical manufacturing wastes, designated as K176, K177, and K178 to the list of hazardous wastes, subjects these wastes to regulation under the Hazardous Waste Management Act and RCRA Subtitle C, and establishes treatment standards for these wastes.

*(C) Amendments to the Corrective Action Management Unit (CAMU) Rule,* published at 67 FR 2962-3029 on January 22, 2002. This amends EPA's 1993 CAMU Rule to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing site cleanups, and removes specific cleanup disincentives caused by the Federal RCRA rules. Specifically, this revision:

1) creates a definition for "CAMU-eligible" wastes distinctive from the current definition of "remediation waste" to govern the types of wastes eligible for placement in CAMUs; 2) provides more detailed minimum design and operating standards for CAMUs in which waste remains after closure, with opportunities for Director-approved alternate designs; 3) requires treatment for wastes placed in CAMUs, including minimum treatment standards; 4) provides for more specific application information requirements for CAMUs, including public notice and opportunity for comment, before final permit decisions involving CAMUs; 5) sets out requirements for CAMUs used only for treatment and storage; 6) "grandfathers" certain types of existing CAMUs, continuing to allow them to operate under the original 1993 rule; 7) amends the regulations for staging piles to allow for mixing, blending, or other similar physical operations that prepare wastes for subsequent management or treatment; and 8) adds a new provision to allow

off-site placement of hazardous CAMU-eligible wastes in hazardous waste landfills provided that the waste is treated to meet CAMU treatment standards.

(D) *NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule)*, published at 67 FR 6792-6818 on February 13, 2002. This rule provides interim standards for emissions from hazardous waste combustors pending the implementation of final standards to replace earlier MACT rules vacated by federal courts.

(E) *NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Rule)*, published at 67 FR 6968-6996 on February 14, 2002, and subsequent correction published at 67 FR 77692 on December 19, 2002. This amendment establishes final operating standards for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators under the federal MACT provisions of the Clean Air Act.

(F) *Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste*, published at 67 FR 11251-11254 on March 13, 2002. This amendment makes corrections to EPA's 1998 Phase IV Land Disposal Restrictions rule, specifically deleting language classifying characteristic mineral processing by-products and sludges being reclaimed as solid wastes, and disallowing the Toxicity Characteristic Leaching Procedure (TCLP) to be used to determine whether manufactured gas plant (MGP) waste is hazardous.

(G) *Zinc Fertilizers Made From Recycled Hazardous Secondary Material*, published at 67 FR 48413-48414 on July 24, 2002. This revision sets stricter

limits on contaminants in zinc fertilizers made from recycled hazardous wastes and secondary materials; requires that zinc oxysulfate fertilizers made from K061, which were previously exempt from regulation, meet contaminant standards; and enhances accountability by industry and ensures safe management of recyclable materials, through a new system of testing, reporting, record keeping, and prescribed storage and handling practices.

(H) *Land Disposal Restrictions, National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries*, published at 67 FR 62623-62625 on October 7, 2002. This revision establishes macroencapsulation as the treatment standard for the management and disposal of specific radioactively contaminated batteries in order to better protect workers involved in the sorting and recycling of hazardous and universal waste batteries.

(I) *Identification and Listing of Hazardous Waste; Final Exclusion*, published at 67 FR 79874-79879 on December 31, 2002. This constitutes the Commission's action to approve and adopt EPA's granting of a petition submitted by Tokusen USA, Inc. (Tokusen) of Conway, Arkansas, to exclude from hazardous waste control (or delist) certain solid wastes generated at its facility. EPA's action responded to Tokusen's petition to delist these wastes under those regulations that allow any person to petition the EPA Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the EPA Administrator to exclude a

waste on a “generator-specific” basis from the hazardous waste lists. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to wastewater treatment sludge generated from electroplating operations at Tokusen’s Conway, Arkansas, facility. On the final effective date of this rulemaking, the adoption excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) and the Arkansas Hazardous Waste Management Act when disposed of in Subtitle D landfills.

3. The Department has proposed the following changes to the state-specific provisions of Regulation No. 23:

- (A) Deletion of the state-only definition of “facility personnel” to eliminate confusion between this term and the Federal provisions of Sections 264 and 265.
- (B) Revise the State’s Additional Requirements for Completing the Hazardous Waste Manifest (Appendix I to Section 262), Item K, to clarify the requirements for an emergency response contact.
- (C) Revise Section 19(c) to reflect the separation of powers between the Arkansas Pollution Control and Ecology Commission and the Department.
- (D) Revoke and reserve Section 24 (Remedial Action Revolving Loans).
- (E) Revise Section 26 (Criteria for Listing Hazardous Substance Sites) and remove and reserve Section 27 (Hazardous Substances Remedial Action Trust Fund Priority List). The Remedial Action Trust Fund

Priority List will be re-published and maintained separately as APC&EC Regulation No. 30 (Hazardous Substances Remedial Action Trust Fund Priority List).

4. Tom Ezell, Program Support Manager in the Department's Hazardous Waste Division, and Mike Bates, Chief, Hazardous Waste Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. (Due to the size of Regulation No. 23, only the specific sections to be amended are addressed at Exhibit "A". These revisions will be incorporated in the whole of the Regulation at the completion of this rulemaking.) A copy of the Legislative Questionnaire attached as Exhibit "B"; and a financial impact statement for the proposed revision, attached as Exhibit "C," are hereby incorporated by reference.

A proposed minute order is attached as Exhibit "D" and is hereby incorporated by reference. WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 23.

Respectfully submitted,

Arkansas Department of  
Environmental Quality  
P.O. Box 8913  
Little Rock, Arkansas 72219-8913  
(501)682-0744

BY: Ellen Rouch  
Attorney Specialist, Ark. Bar No. 94091