

Exhibit A:
Proposed Rule Changes

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**



REGULATION NO. 23

**HAZARDOUS WASTE
MANAGEMENT**

**Submitted to the Pollution Control and Ecology
Commission in September, 2004**

DRAFT

TABLE OF CONTENTS

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION No. 23

(HAZARDOUS WASTE MANAGEMENT)

Section 1. AUTHORITY	
1	
Section 2. VIOLATION	1
Section 3. AMENDMENT AND UPDATE OF REGULATION No. 23 (HAZARDOUS WASTE MANAGEMENT)	1
Section 4. CONFLICT OF INTEREST.	2
Section 5. (Reserved)	2
Section 6. FEES AND COSTS.	2
Section 260. HAZARDOUS WASTE MANAGEMENT SYSTEM - GENERAL	
Subsection A -- General	6
§ 260.1 Purpose, scope, and applicability	6
§ 260.2 Availability of information; confidentiality of information	6
§ 260.3 Use of number and gender.	6
Subsection B -- Definitions	7
§ 260.10 Definitions.	7
§ 260.11 References.	15
Subsection C -- Rulemaking Petitions	16
§ 260.20 General	16
§ 260.21 Petitions for equivalent testing or analytical methods	17
§ 260.22 Petitions to amend Section 261 to exclude a waste produced at a particular facility.	17
§ 260.23 Petitions to amend Section 273 to include additional hazardous wastes.	19
§ 260.30 Variances from classification as a solid waste.	19
§ 260.31 Standards and criteria for variances from classification as a solid waste.	20
§ 260.32 Variance to be classified as a boiler.	20
§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.	20
§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.	21
§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.	21
Appendix I to Section 260: Overview of Subtitle C Regulations	21
Section 261 -- IDENTIFICATION AND LISTING OF HAZARDOUS WASTE	

Subsection A -- General	
§ 261.1 Purpose and scope.	27
§ 261.2 Definition of Solid Waste.	28
§ 261.3 Definition of Hazardous Waste.	30
§ 261.4 Exclusions.	34
§ 261.5 Special requirements for hazardous waste generated by conditionally-exempt small quantity generators	42
§ 261.6 Requirements for recyclable materials	44
§ 261.7 Residues of hazardous waste in empty containers.	45
§ 261.8 PCB Wastes Regulated under Toxic Substances Control Act	46
§ 261.9 Requirements for Universal Waste.	46
Subsection B -- Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste	46
§ 261.10 Criteria for identifying the characteristics of hazardous waste.	46
§ 261.11 Criteria for listing hazardous waste.	46
Subsection C -- Characteristics of Hazardous Waste	47
§ 261.20 General.	47
§ 261.21 Characteristic of ignitability.	47
§ 261.22 Characteristic of corrosivity.	48
§ 261.23 Characteristic of reactivity.	48
§ 261.24 Toxicity characteristic.	48
Subsection D -- Lists of Hazardous Wastes	49
§ 261.30 General.	49
§ 261.31 Hazardous wastes from non-specific sources.	49
§ 261.32 Hazardous wastes from specific sources.	51
§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.	53
§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.	61
§ 261.36 [Reserved]	61
§ 261.37 [Reserved]	61
§ 261.38 Comparable/Syngas Fuel Exclusion.	61
Appendix I to Section 261 - Representative Sampling Methods	69
Appendix II to Section 261 -- Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)	69
Appendix III to Section 261 Chemical Analysis Test Methods	69
Appendix VII to Section 261 -- Basis for Listing Hazardous Waste	69
Appendix VIII to Section 261 — Hazardous Constituents	71
Appendix IX to Section 261 — Wastes Excluded Under §§ 260.20 and 260.22	82
Section 262	
STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE	
Subsection A -- General	84
§ 262.10 Purpose, scope, and applicability.	84
§ 262.11 Hazardous waste determination.	85
§ 262.12 EPA identification numbers.	85
§ 262.13 State Requirements for Transportation of Waste from Generators of over 100 kgs per Month.	85
Subsection B -- The Manifest	85

§ 262.20 General Requirements.	85
§ 262.21 Acquisition of Manifests.	86
§ 262.22 Number of copies.	86
§ 262.23 Use of the Manifest.	86
§ 262.24 Additional Requirements for Generators of Hazardous Wastes in Arkansas (Including Wastes from Generators of over 100 kgs per month)	86
Subsection C -- Pre-Transport Requirements	87
§ 262.30 Packaging	87
§ 262.31 Labeling.	87
§ 262.32 Marking	87
§ 262.33 Placarding	87
§ 262.34 Accumulation time.	87
§ 262.35 Handling and Disposal Requirements for Conditionally-Exempt Small Quantity Generators.	90
Subsection D -- Recordkeeping and Reporting	90
§ 262.40 Recordkeeping.	90
§ 262.41 Annual Report.	91
§ 262.42 Exception reporting.	91
§ 262.43 Additional reporting.	91
§ 262.44 [Reserved]	91
Subsection E -- Exports of Hazardous Waste	91
§ 262.50 Applicability.	91
§ 262.51 Definitions.	92
§ 262.52 General requirements.	92
§ 262.53 Notification of intent to export.	92
§ 262.54 Special manifest requirements.	93
§ 262.55 Exception reports.	93
§ 262.56 Annual reports.	93
§ 262.57 Recordkeeping.	94
§ 262.58 International agreements.	94
Subsection F -- Imports of Hazardous Waste	94
§ 262.60 Imports of hazardous waste.	94
Subsection G -- Farmers	95
§ 262.70 Farmers.	95
Subsection H -- Transfrontier Shipments of Hazardous Waste for Recovery within the OECD	95
§ 262.80 Applicability.	95
§ 262.81 Definitions.	95
§ 262.82 General conditions.	96
§ 262.83 Notification and consent.	97
§ 262.84 Tracking document.	98
§ 262.85 Contracts.	99
§ 262.86 Provisions relating to recognized traders.	99
§ 262.87 Reporting and recordkeeping.	99
§ 262.88 Pre-approval for U.S. Recovery Facilities	100
§ 262.89 OECD Waste Lists.	100
Appendix I to Section 262	102

**Section 263 —
STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

Subsection A -- General	113
§ 263.10 Scope.	113
§ 263.11 EPA identification number.	113
§ 263.12 Transfer facility requirements.	113
§ 263.13 Transporter Permits.	113
Subsection B -- Compliance with the Manifest System and Recordkeeping	113
§ 263.20 The manifest system.	113
§ 263.21 Compliance with the manifest.	115
§ 263.22 Recordkeeping.	115
Subsection C -- Hazardous Waste Discharges	115
§ 263.30 Immediate Action.	115
§ 263.31 Discharge clean-up.	116

**Section 264.
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

Subsection A -- General	117
§ 264.1 Purpose, scope, and applicability.	117
§ 264.2 [Reserved]	119
§ 264.3 Relationship to interim status standards.	121
§ 264.4 Imminent hazard action.	121
Subsection B -- General Facility Standards	121
§ 264.10 Applicability.	121
§ 264.11 Identification number.	121
§ 264.12 Required notices.	122
§ 264.13 General waste analysis.	122
§ 264.14 Security	123
§ 264.15 General Inspection requirements.	124
§ 264.16 Personnel training.	124
§ 264.17 General requirements for ignitable, reactive, or incompatible wastes.	126
§ 264.18 Location standards.	126
§ 264.19 Construction quality assurance program.	128
§264.20 State-specific Performance Standards	128
Subsection C -- Preparedness and Prevention	129
§ 264.30 Applicability.	129
§ 264.31 Design and operation of facility.	129
§ 264.32 Required equipment.	129
§ 264.33 Testing and maintenance of equipment.	130
§ 264.34 Access to communications or alarm system.	130
§ 264.35 Required aisle space.	130
§ 264.36 [Reserved]	130
§ 264.37 Arrangements with local authorities.	130
Subsection D -- Contingency Plan and Emergency Procedures	130
§ 264.50 Applicability.	130
§ 264.51 Purpose and implementation of contingency plan.	130
§ 264.52 Content of contingency plan.	130

§ 264.53	Copies of contingency plan.	131
§ 264.54	Amendment of contingency plan.	131
§ 264.55	Emergency coordinator.	131
§ 264.56	Emergency procedures.	131
Subsection E -- Manifest System, Recordkeeping, & Reporting		132
§ 264.70	Applicability.	132
§ 264.71	Use of manifest system.	132
§ 264.72	Manifest discrepancies.	133
§ 264.73	Operating record.	133
§ 264.74	Availability, retention, and disposition of records	134
§ 264.75	Annual Report.	134
§ 264.76	Unmanifested waste report.	135
§ 264.77	Additional reports.	135
Subsection F -- Releases from Solid Waste Management Units		135
§ 264.90	Applicability.	135
§ 264.91	Required programs.	136
§ 264.92	Ground-water protection standard.	136
§ 264.93	Hazardous constituents.	136
§ 264.94	Concentration limits.	137
§ 264.95	Point of compliance.	138
§ 264.96	Compliance period	138
§ 264.97	General groundwater monitoring requirements.	138
§ 264.98	Detection monitoring program.	140
§ 264.99	Compliance monitoring program.	142
§ 264.100	Corrective action program.	143
§ 264.101	Corrective action for solid waste management units	144
Subsection G -- Closure and Post-Closure		144
§ 264.110	Applicability.	144
§ 264.111	Closure performance standard.	144
§ 264.112	Closure plan; amendment of plan.	144
§ 264.113	Closure; time allowed for closure.	146
§ 264.114	Disposal or decontamination of equipment, structures, and soils.	149
§ 264.115	Certification of closure.	149
§ 264.116	Survey plat.	149
§ 264.117	Post-closure care and use of property.	149
§ 264.118	Post-closure plan; amendment of plan.	150
§ 264.119	Post-closure notices.	151
§ 264.120	Certification of completion of post-closure care.	151
Subsection H -- Financial Requirements		151
§ 264.140	Applicability.	151
§ 264.141	Definitions of terms as used in this Subsection.	152
§ 264.142	Cost estimate for closure.	152
§ 264.143	Financial assurance for closure.	153
§ 264.144	Cost estimate for post-closure care.	160
§ 264.145	Financial assurance for post-closure care.	161
§ 264.146	Use of a mechanism for financial assurance of both closure and post-closure care.	168
§ 264.147	Liability requirements.	168
§ 264.148	Incapacity of owners or operators, guarantors, or financial institutions.	173
§ 264.149	Use of State-required mechanisms.	173
§ 264.150	State assumption of responsibility.	173
§ 264.151	Wording of the instruments.	174

Subsection I -- Use and Management of Containers	192
§ 264.170 Applicability.	192
§ 264.171 Condition of containers.	192
§ 264.172 Compatibility of waste with containers.	192
§ 264.173 Management of containers.	192
§ 264.174 Inspections.	192
§ 264.175 Containment.	193
§ 264.176 Special requirements for ignitable or reactive waste	193
§ 264.177 Special requirements for incompatible wastes.	193
§ 264.178 Closure.	193
§ 264.179 Air emission standards.	193
Subsection J -- Tank Systems	194
§ 264.190 Applicability.	194
§ 264.191 Assessment of existing tank system's integrity.	194
§ 264.192 Design and installation of new tank systems or components.	194
§ 264.193 Containment and detection of releases.	195
§ 264.194 General operating requirements.	199
§ 264.195 Inspections.	199
§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	199
§ 264.197 Closure and post-closure care.	201
§ 264.198 Special requirements for ignitable or reactive wastes	201
§ 264.199 Special requirements for incompatible wastes.	201
§ 264.200 Air emission standards.	201
Subsection K -- Surface Impoundments	201
§ 264.220 Applicability.	201
§ 264.221 Design and operating requirements.	201
§ 264.222 Action leakage rate.	203
§ 264.223 Response actions.	204
§ 264.224 - 264.225 [Reserved]	204
§ 264.226 Monitoring and inspection.	204
§ 264.227 Emergency repairs; contingency plans.	205
§ 264.228 Closure and post-closure care.	205
§ 264.229 Special requirements for ignitable or reactive wastes	206
§ 264.230 Special requirements for incompatible wastes.	206
§ 264.231 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.	206
§ 264.232 Air emission standards.	206
Subsection L -- Waste Piles	207
§ 264.250 Applicability.	207
§ 264.251 Design and operating requirements.	207
§ 264.252 Action leakage rate.	209
§ 264.253 Response actions.	209
§ 264.254 Monitoring and inspection.	209
§ 264.255 [Reserved]	210
§ 264.256 Special requirements for ignitable or reactive waste	210
§ 264.257 Special requirements for incompatible wastes.	210
§ 264.258 Closure and post-closure care.	210
§ 264.259 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.	210
Subsection M -- Land Treatment	211
§ 264.270 Applicability.	211
§ 264.271 Treatment Program.	211

§ 264.272 Treatment demonstration.	211
§ 264.273 Design and operating requirements.	211
§ 264.274 - 264.275 [Reserved]	212
§ 264.276 Food-chain crops.	212
§ 264.277 [Reserved]	213
§ 264.278 Unsaturated zone monitoring.	213
§ 264.279 Recordkeeping.	214
§ 264.280 Closure and post-closure care.	214
§ 264.281 Special requirements for ignitable or reactive waste	215
§ 264.282 Special requirements for incompatible wastes.	215
§ 264.283 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.	216
Subsection N -- Landfills	216
§ 264.300 Applicability.	216
§ 264.301 Design and operating requirements.	216
§ 264.302 Action leakage rate.	218
§ 264.303 Monitoring and inspection.	218
§ 264.304 Response actions.	219
§§ 264.305 — 264.308 [Reserved]	219
§ 264.309 Surveying and recordkeeping.	219
§ 264.310 Closure and post-closure care.	219
§ 264.311 [Reserved]	220
§ 264.312 Special requirements for ignitable or reactive waste	220
§ 264.313 Special requirements for incompatible wastes.	220
§ 264.314 Special requirements for bulk and containerized liquids.	220
§ 264.315 Special requirements for containers.	221
§ 264.316 Disposal of small containers of hazardous wastes in overpacked drums (“lab packs”).	221
§ 264.317 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.	221
Subsection O -- Incinerators	222
§ 264.340 Applicability.	222
§ 264.341 Waste analysis.	222
§ 264.342 Principal organic hazardous constituents (POHCs).	222
§ 264.343 Performance standards.	222
§ 264.344 Hazardous waste incinerator permits.	223
§ 264.345 Operating requirements.	223
§ 264.346 [Reserved]	224
§ 264.347 Monitoring and inspections.	224
§ 264.351 Closure.	224
Subsections P-R [Reserved]	224
Subsection S -- Special Provisions for Clean-up	224
§ 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations	224
§ 264.551 Grandfathered Corrective Action Management Units (CAMUs)	224
§ 264.552 Corrective Action Management Units.	224
§ 264.553 Temporary Units	226
§ 264.554 Staging piles.	226
§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills	227
Subsections T-V [Reserved]	228
Subsection W -- Drip Pads	228
§ 264.570 Applicability.	228
§ 264.571 Assessment of existing drip pad integrity.	229
§ 264.572 Design and installation of new drip pads.	229

§ 264.573 Design and operating requirements.	229
§ 264.574 Inspections.	231
§ 264.575 Closure.	231
Subsection X - Miscellaneous Units	232
§ 264.600 Applicability	232
§ 264.601 Environmental performance standards.	232
§ 264.602 Monitoring, analysis, inspection, response, reporting, and corrective action.	233
§ 264.603 Post-closure care.	233
Subsections Y-Z [Reserved]	233
Subsection AA -- Air Emission Standards for Process Vents	233
§ 264.1030 Applicability.	233
§ 264.1031 Definitions.	234
§ 264.1032 Standards: Process vents.	235
§ 264.1033 Standards: Closed-vent systems and control devices.	235
§ 264.1034 Test methods and procedures.	240
§ 264.1035 Recordkeeping requirements.	241
§ 264.1036 Reporting requirements.	245
Subsection BB -- Air Emissions Standards for Equipment Leaks	245
§ 264.1050 Applicability.	245
§ 264.1051 Definitions.	246
§ 264.1052 Standards: Pumps in light liquid service.	246
§ 264.1053 Standards: Compressors.	246
§ 264.1054 Standards: Pressure relief devices in gas/vapor service.	247
§ 264.1055 Standards: Sample connecting systems.	247
§ 264.1056 Standards: Open-ended valves or lines.	247
§ 264.1057 Standards: Valves in gas/vapor service or light liquid service.	248
§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.	248
§ 264.1059 Standards: Delay of repair.	248
§ 264.1060 Standards: Closed-vent systems and control devices.	249
§ 264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.	249
§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.	250
§ 264.1063 Test methods and procedures.	250
§ 264.1064 Recordkeeping requirements.	251
§ 264.1065 Reporting requirements.	253
§§ 264.1066 -- 264.1079 [Reserved]	253
Subsection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers	253
§ 264.1080 Applicability.	253
§ 264.1081 Definitions.	254
§ 264.1082 Standards: General.	254
§ 264.1083 Waste determination procedures.	257
§ 264.1084 Standards: Tanks.	258
§ 264.1085 Standards: Surface impoundments.	266
§ 264.1086 Standards: Containers.	269
§ 264.1087 Standards: Closed-vent systems and control devices.	274
§ 264.1088 Inspection and monitoring requirements.	276
§ 264.1089 Recordkeeping requirements.	276
§ 264.1090 Reporting requirements.	279

Subsection DD – Containment Buildings	280
§ 264.1100 Applicability.	280
§ 264.1101 Design and operating standards.	280
§ 264.1102 Closure and post-closure care.	282
§ 264.1103-264.1110 [Reserved]	283
Subsection EE — Hazardous Waste Munitions and Explosives Storage	283
§ 264.1200 Applicability.	283
§ 264.1201 Design and operating standards.	283
§ 264.1202 Closure and post-closure care.	283
Appendix I to Section 264 -- Recordkeeping Instructions	285
Appendices II – III to Section 264 [Reserved]	286
Appendix IV to Section 264 -- Cochran’s Approximation to the Behrens-Fisher Students’ T-Test	286
Appendix V to Section 264 -- Examples of Potentially Incompatible Waste	287
Appendices VII - VIII to Section 264 [Reserved]	287
Appendix IX to Section 264	288
Section 265.	
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES	
Subsection A -- General	297
§ 265.1 Purpose, scope, and applicability.	297
§ 265.2 - 265.3 [Reserved]	298
§ 265.4 Imminent hazard action.	298
Subsection B -- General Facility Standards	299
§ 265.10 Applicability	299
§ 265.11 Identification number.	299
§ 265.12 Required notices.	299
§ 265.13 General waste analysis.	299
§ 265.14 Security.	300
§ 265.15 General Inspection requirements.	301
§ 265.16 Personnel training.	301
§ 265.17 General requirements for ignitable, reactive, or incompatible wastes.	303
§ 265.18 Location standards.	303
§ 265.19 Construction quality assurance program.	303
Subsection C -- Preparedness and Prevention	304
§ 265.30 Applicability.	304
§ 265.31 Maintenance and operation of facility.	304
§ 265.32 Required equipment.	304
§ 265.33 Testing and maintenance of equipment.	304
§ 265.34 Access to communications or alarm system.	304
§ 265.35 Required aisle space.	305
§ 265.36 [Reserved]	305
§ 265.37 Arrangements with local authorities.	305
Subsection D – Contingency Plan and Emergency Procedures	305
§ 265.50 Applicability.	305

§ 265.51 Purpose and implementation of contingency plan.	305
§ 265.52 Content of contingency plan.	305
§ 265.53 Copies of contingency plan.	306
§ 265.54 Amendment of contingency plan.	306
§ 265.55 Emergency coordinator.	306
§ 265.56 Emergency procedures.	306
Subsection E – Manifest System, Recordkeeping, & Reporting	307
§ 265.70 Applicability.	307
§ 265.71 Use of manifest system.	307
§ 265.72 Manifest discrepancies.	308
§ 265.73 Operating record.	308
§ 265.74 Availability, retention, and disposition of records.	309
§ 265.75 Annual Report.	309
§ 265.76 Unmanifested waste report.	309
§ 265.77 Additional reports.	309
Subsection F -- Groundwater Monitoring	310
§ 265.90 Applicability.	310
§ 265.91 Ground-water monitoring system.	310
§ 265.92 Sampling and analysis.	311
§ 265.93 Preparation, evaluation, and response.	312
§ 265.94 Recordkeeping and reporting.	313
Subsection G – Closure and Post-Closure	313
§ 265.110 Applicability.	313
§ 265.111 Closure performance standard.	314
§ 265.112 Closure plan; amendment of plan.	314
§ 265.113 Closure; time allowed for closure.	316
§ 265.114 Disposal or decontamination of equipment, structures, and soils.	318
§ 265.115 Certification of closure.	318
§ 265.116 Survey plat.	318
§ 265.117 Post-closure care and use of property.	319
§ 265.118 Post-closure plan; amendment of plan.	319
§ 265.119 Post-closure notices.	321
§ 265.120 Certification of completion of post-closure care.	322
§ 265.121 Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits.	322
Subsection H – Financial Requirements	322
§ 265.140 Applicability.	322
§ 265.141 Definitions of terms as used in this Subsection.	323
§ 265.142 Cost estimate for closure.	323
§ 265.143 Financial assurance for closure.	324
§ 265.144 Cost estimate for post-closure care.	330
§ 265.145 Financial assurance for post-closure care.	331
§ 265.146 Use of a mechanism for financial assurance of both closure and post-closure care.	337
§ 265.147 Liability requirements.	337
§ 265.148 Incapacity of owners or operators, guarantors, or financial institutions.	342
§ 265.149 Use of State-required mechanisms.	342
§ 265.150 State assumption of responsibility.	342
Subsection I – Use and Management of Containers	343
§ 265.170 Applicability.	343
§ 265.171 Condition of containers.	343
§ 265.172 Compatibility of waste with container.	343

§ 265.173 Management of containers.	343
§ 265.174 Inspections.	343
§ 265.175 [Reserved]	343
§ 265.176 Special requirements for ignitable or reactive waste	343
§ 265.177 Special requirements for incompatible wastes.	343
§ 265.178 Air emission standards.	343
Subsection J – Tank Systems	344
§ 265.190 Applicability.	344
§ 265.191 Assessment of existing tank system’s integrity.	344
§ 265.192 Design and installation of new tank systems or components.	344
§ 265.193 Containment and detection of releases.	345
§ 265.194 General operating requirements.	349
§ 265.195 Inspections.	349
§ 265.196 Response to leaks or spills and disposition of leaking or unfit -for-use tank systems.	350
§ 265.197 Closure and post-closure care.	351
§ 265.198 Special requirements for ignitable or reactive wastes	351
§ 265.199 Special requirements for incompatible wastes.	351
§ 265.200 Waste analysis and trial tests.	351
§ 265.201 Special requirements for Generators of between 100 and 1000 kg/mo who accumulate hazardous waste in tanks	352
§ 265.202 Air emission standards.	352
Subsection K – Surface Impoundments	353
§ 265.220 Applicability.	353
§ 265.221 Design and operating requirements.	353
§ 265.222 Action leakage rate.	354
§ 265.223 Response actions.	354
§ 265.224 Containment system.	354
§ 265.225 Waste analysis and trial tests.	355
§ 265.226 Monitoring and inspection.	355
§ 265.227 [Reserved]	355
§ 265.228 Closure and post-closure care.	355
§ 265.229 Special requirements for ignitable or reactive wastes	356
§ 265.230 Special requirements for incompatible wastes.	356
§ 265.231 Air emission standards.	356
Subsection L – Waste Piles	356
§ 265.250 Applicability.	356
§ 265.251 Protection from wind.	356
§ 265.252 Waste analysis.	356
§ 265.253 Containment.	356
§ 265.254 Design and operating requirements.	357
§ 265.255 Action leakage rates.	357
§ 265.256 Special requirements for ignitable or reactive waste.	357
§ 265.257 Special requirements for incompatible wastes.	357
§ 265.258 Closure and post-closure care.	357
§ 265.259 Response actions.	358
§ 265.260 Monitoring and inspection.	358
Subsection M – Land Treatment	358
§ 265.270 Applicability.	358
§ 265.271 [Reserved]	358
§ 265.272 General operating requirements.	358
§ 265.273 Waste analysis.	358
§ 265.274 - 265.275 [Reserved]	359

§ 265.276 Food chain crops.	359
§ 265.277 [Reserved]	360
§ 265.278 Unsaturated zone (zone of aeration) monitoring.	360
§ 265.279 Recordkeeping.	360
§ 265.280 Closure and post-closure.	360
§ 265.281 Special requirements for ignitable or reactive waste	361
§ 265.282 Special requirements for incompatible wastes.	361
Subsection N -- Landfills	361
§ 265.300 Applicability.	361
§ 265.301 Design and operating requirements.	361
§ 265.302 Action Leakage rate.	362
§ 265.303 Response actions.	362
§ 265.304 Monitoring and inspection.	363
§ 265.305 - 265.308 [Reserved]	363
§ 265.309 Surveying and recordkeeping.	363
§ 265.310 Closure and post-closure care.	363
§ 265.311 [Reserved]	363
§ 265.312 Special requirements for ignitable or reactive waste	364
§ 265.313 Special requirements for incompatible wastes.	364
§ 265.314 Special requirements for bulk and containerized liquids.	364
§ 265.315 Special requirements for containers.	365
§ 265.316 Disposal of small containers of hazardous waste in overpacked drums (“lab packs”).	365
Subsection O -- Incinerators	365
§ 265.340 Applicability.	365
§ 265.341 Waste analysis.	366
§ 265.342 - 265.344 [Reserved]	366
§ 265.345 General operating requirements.	366
§ 265.346 [Reserved]	366
§ 265.347 Monitoring and inspections.	366
§ 265.348 - 265.350 [Reserved]	366
§ 265.351 Closure.	366
§ 265.352 Interim status incinerators burning particular hazardous wastes.	366
§ 265.353 - 265.369 [Reserved]	366
Subsection P -- Thermal Treatment	366
§ 265.370 Other thermal treatment.	366
§ 265.373 General operating requirements.	367
§ 265.375 Waste analysis.	367
§ 265.377 Monitoring and inspections.	367
§ 265.381 Closure.	367
§ 265.382 Open burning; waste explosives.	367
§ 265.383 Interim status thermal treatment devices burning particular hazardous waste.	368
Subsection Q -- Chemical, Physical, and Biological Treatment	368
§ 265.400 Applicability.	368
§ 265.401 General operating requirements.	368
§ 265.402 Waste analysis and trial tests.	368
§ 265.403 Inspections.	368
§ 265.404 Closure.	369
§ 265.405 Special requirements for ignitable or reactive waste	369
§ 265.406 Special requirements for incompatible wastes.	369
Subsection R -- Underground Injection	369
§ 265.430 Applicability.	369

Subsection W -- Drip Pads	369
§ 265.440 Applicability.	369
§ 265.441 Assessment of existing drip pad integrity.	370
§ 265.442 Design and installation of new drip pads.	370
§ 265.443 Design and operating requirements.	370
§ 265.444 Inspections.	372
§ 265.445 Closure.	372
Subsection AA -- Air Emission Standards for Process Vents	373
§ 265.1030 Applicability.	373
§ 265.1031 Definitions.	373
§ 265.1032 Standards: Process vents.	373
§ 265.1033 Standards: Closed-vent systems and control devices	373
§ 265.1034 Test methods and procedures.	378
§ 265.1035 Recordkeeping requirements.	379
Subsection BB -- Air Emission Standards for Equipment Leaks	383
§ 265.1050 Applicability.	383
§ 265.1051 Definitions.	383
§ 265.1052 Standards: Pumps in light liquid service.	383
§ 265.1053 Standards: Compressors.	384
§ 265.1054 Standards: Pressure relief devices in gas/vapor service.	385
§ 265.1055 Standards: Sampling connecting systems.	385
§ 265.1056 Standards: Open-ended valves or lines.	385
§ 265.1057 Standards: Valves in gas/vapor service or in light liquid service.	385
§ 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid service, and flanges and other connectors.	386
§ 265.1059 Standards: Delay of repair.	386
§ 265.1060 Standards: Closed-vent systems and control devices.	386
§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service; percentage of valves allowed to leak.	387
§ 265.1062 Alternative standards for valves in gas/vapor or in light liquid service; skip period leak detection and repair.	387
§ 265.1063 Test methods and procedures.	388
§ 265.1064 Recordkeeping requirements.	388
Subsection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers	390
§ 265.1080 Applicability.	390
§ 265.1081 Definitions.	391
§ 265.1082 Schedule for implementation of air emission standards.	393
§ 265.1083 Standards: General.	394
§ 265.1084 Waste determination procedures.	397
§ 265.1085 Standards: Tanks.	406
§ 265.1086 Standards: surface impoundments.	414
§ 265.1087 Standards: Containers	417
§ 265.1088 Standards: Closed-vent systems and control devices.	422
§ 265.1089 Inspection and monitoring requirements.	424
§ 265.1090 Recordkeeping requirements.	424
Subsection DD – Containment Buildings	427
§ 265.1100 Applicability.	427
§ 265.1101 Design and operating standards.	428
§ 265.1102 Closure and post-closure care.	430

Subsection EE — Hazardous Waste Munitions and Explosives Storage	430
§ 265.1200 Applicability.	430
§ 265.1201 Design and operating standards.	430
§ 265.1202 Closure and post-closure care.	431
Appendix I to Section 265 -- Recordkeeping Instructions	431
Appendix II to Section 265 -- [Reserved]	432
Appendix III to Section 265 -- EPA Interim Primary Drinking Water Standards	432
Appendix IV to Section 265 -- Tests for Significance	433
Appendix V to Section 265 -- Examples of Potentially Incompatible Waste	433
Appendix VI to Section 265 Compounds With Henry's Law Constant Less Than 0.1 Y/X	434
Section 266 –	
STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES	
AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES	
Subsections A -- B [Reserved]	437
Subsection C -- Recyclable Materials Used in a Manner Constituting Disposal	438
§ 266.20 Applicability.	438
§ 266.21 Standards applicable to generators and transporters of materials used in a manner that constitute disposal.	438
§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.	438
§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.	438
Subsection D - E [Reserved]	438
Subsection F -- Recyclable Materials Utilized for Precious Metal Recovery	439
§ 266.70 Applicability and requirements.	439
Subsection G -- Spent Lead-Acid Batteries Being Reclaimed	439
§ 266.80 Applicability and requirements.	439
Subsection H – Hazardous Waste Burned in Boilers and Industrial Furnaces	440
§ 266.100 Applicability.	440
§ 266.101 Management prior to burning.	442
§ 266.102 Permit standards for burners.	442
§ 266.103 Interim status standards for burners.	448
§ 266.104 Standards to control organic emissions.	461
§ 266.105 Standards to control particulate matter.	463
§ 266.106 Standards to control metals emissions.	463
§ 266.107 Standards to control hydrogen chloride (HCl) and chlorine gas (Cl ₂) emissions.	466
§ 266.108 Small quantity on-site burner exemption.	467
§ 266.109 Low risk waste exemption.	468
§ 266.110 Waiver of DRE trial burn for boilers.	469
§ 266.111 Standards for direct transfer.	469
§ 266.112 Regulation of residues.	471
Subsections I-L (Reserved)	472
Subsection M — Military Munitions	472
§ 266.200 Applicability.	472
§ 266.201 Definitions.	472

§ 266.202	Definition of solid waste.	473
§ 266.203	Standards applicable to the transportation of solid waste military munitions.	473
§ 266.204	Standards applicable to emergency responses.	474
§ 266.205	Standards applicable to the storage of solid waste military munitions.	474
§ 266.206	Standards applicable to the treatment and disposal of waste military munitions	.475
Subsection N — Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal		476
Terms		
§ 266.210	What definitions apply to this subsection?	476
Storage and Treatment Conditional Exemption and Eligibility		476
§ 266.220	What does a storage and treatment conditional exemption do?	476
§ 266.225	What wastes are eligible for the storage and treatment conditional exemption?	476
§ 266.230	What conditions must you meet for your LLMW to qualify for and maintain a storage and treatment exemption?	476
Treatment		477
§ 266.235	What waste treatment does the storage and treatment conditional exemption allow?	477
Loss of Conditional Exemption		477
§266.240	How could you lose the conditional exemption for your LLMW and what action must you take?	477
§ 266.245	If you lose the storage and treatment conditional exemption for your LLMW, can the exemption be reclaimed?	477
RecordKeeping		478
§ 266.250	What records must you keep at your facility and for how long?	478
Reentry Into RCRA		478
§ 266.255	When is your low-level mixed waste no longer eligible for the storage conditional exemption?	478
Storage Unit Closure		478
§ 266.260	Do closure requirements apply to units that stored LLMW prior to the effective date of subsection N?	478
Transportation and Disposal Conditional Exemption		478
§ 266.305	What does the transportation and disposal conditional exemption do?	478
Eligibility		478
§ 266.310	What wastes are eligible for the transportation and disposal conditional exemption?	478
Conditions		479
§ 266.315	What are the conditions you must meet for your waste to qualify for and maintain the transportation and disposal exemption?	479
§ 266.320	What treatment standards must your eligible waste meet?	479
§ 266.325	Are you subject to the manifest and transportation condition in § 266.315(b)?	479
§ 266.330	When does the transportation and disposal exemption take effect?	479
§ 266.335	Where must your exempted waste be disposed of?	479
§ 266.340	What type of container must be used for disposal of exempted waste?	479
Notification		479
§ 266.345	Whom must you notify?	479

Recordkeeping	480
§ 266.350 What records must you keep at your facility and for how long?	480
Loss of Transportation and Disposal Conditional Exemption	480
§ 266.355 How could you lose the transportation and disposal conditional exemption for your waste and what actions must you take?	480
§ 266.360 If you lose the transportation and disposal conditional exemption for a waste, can the exemption be reclaimed?	480
Appendix I to Section 266- Tier I and II Feed Rate and Emissions Screening Limits for Metals	482
Appendix II to Section 266- Tier I feed Rate Screening Limits for Total Chlorine	485
Appendix III to Section 266-Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride	485
Appendix IV to Section 266 -Reference Air Concentrations	486
Appendix V to Section 266 - Risk Specific Doses	487
Appendix VI to Section 266 - Stack Plume Rise	488
Appendix VII to Section 266 - Health Based Limits for Exclusion of Waste-Derived Residues	488
Appendix VIII to Section 266 - Potential PICs for Determination of Exclusion of Waste-Derived Residues	489
Appendix IX to Section 266 - Methods Manual For Compliance With the BIF Regulations	489
Appendix X to Section 266 - Guideline on Air Quality Models	489
Appendix XI to Section 266- Lead-Bearing Materials that May Be Processed in Exempt Lead Smelters	490
Appendix XII to Section 266 - Nickel or Chromium-bearing Materials that May Be Processed in Exempt Nickel-Chromium Recovery Furnaces	490
Appendix XIII to Section 266 - Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units	490
Section 268 --	
LAND DISPOSAL RESTRICTIONS	
Subsection A -- General	491
§ 268.1 Purpose, scope and applicability.	491
§ 268.2 Definitions applicable in this section.	492
§ 268.3 Dilution prohibited as a substitute for treatment.	493
§ 268.4 Treatment surface impoundment exemption.	493
§ 268.5 Procedures for case-by-case extensions to an effective date.	494
§ 268.6 Petitions to allow land disposal of a waste prohibited under Subsection C of Section 268.	496
§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.	497
§ 268.8 [Reserved]	502
§ 268.9 Special rules regarding wastes that exhibit a characteristic.	502
Subsection B -- Schedule for Land Disposal Prohibition and Establishment of Treatment Standards	503
§ 268.10 - 268.12 [Reserved]	503
§ 268.13 Schedule for wastes identified or listed after November 8, 1984.	503
§ 268.14 Surface impoundment exemptions.	503
Subsection C -- Prohibitions on Land Disposal	503
§ 268.30 Waste specific prohibitions — wood preserving wastes.	503
§ 268.31 Waste specific prohibitions -- Dioxin-containing wastes.	503
§ 268.32 Waste specific prohibitions — Soils exhibiting the toxicity characteristic	

for metals and containing PCBs	504
§ 268.33 [Reserved]	504
§ 268.34 Waste specific prohibitions — toxicity characteristic metal wastes.	504
§ 268.35 Waste specific prohibitions — petroleum refining wastes.	505
§ 268.36 Waste specific prohibitions – Inorganic chemical wastes	505
§ 268.37 Waste specific prohibitions-ignitable and corrosive characteristic wastes whose treatment standards were vacated.	505
§ 268.38 Waste specific prohibitions-newly identified organic toxicity characteristic wastes and newly listed coke by-product and chlorotoluene production wastes.	505
§ 268.39 Waste specific prohibitions -- spent aluminum potliners; reactive; and carbamate wastes.	506
Subsection D -- Treatment Standards	507
§ 268.40 Applicability of Treatment Standards.	507
§ 268.41 Treatment standards expressed as concentrations in waste extract.	604
§ 268.42 Treatment standards expressed as specified technologies.	604
§ 268.43 Treatment standards expressed as waste concentrations.	606
§ 268.44 Variance from a treatment standard.	606
§ 268.45 Treatment standards for hazardous debris.	607
§ 268.46 Alternative treatment standards based on HTMR.	611
§ 268.47 [Reserved]	611
§ 268.48 Universal Treatment Standards	611
§ 268.49 Alternative LDR treatment standards for contaminated soil.	613
Subsection E -- Prohibitions on Storage	614
§ 268.50 Prohibitions on storage of restricted wastes.	614
Appendix I to Section 268 [Reserved]	615
Appendix II to Section 268 [Reserved]	615
Appendix III to Section 268 - List of Halogenated Organic Compounds Regulated under § 268.32	615
Appendix IV to Section 268 - Wastes Excluded From Lab Packs Under the Alternative Treatment Standards of § 268.42(c)	616
Appendix V to Section 268 [Reserved]	616
Appendix VI to Section 268 - Recommended Technologies to Achieve Deactivation of Characteristics in § 268.42	616
Appendix VII to Section 268 - Effective Dates of Disposal	617
Appendix VIII to Section 268 - LDR Effective Dates of Injected Prohibited Hazardous Waste	623
Appendix IX to Section 268 -	625
Appendix XI to Section 268 - Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit According to 40 CFR 268.3(c)	625
Section 270.	
ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM	
Subsection A -- General Information	626
§ 270.1 Purpose and scope of these regulations.	627
§ 270.2 Definitions.	629
§ 270.3 Considerations under Federal law.	632
§ 270.4 Effect of a permit.	632
§ 270.5 Noncompliance and program reporting by the Director.	633
§ 270.6 References.	634
§ 270.7 Arkansas's General Requirements for Permit Applications	634
Subsection B – Permit Applications	641
§ 270.10 General application requirements.	641

§ 270.11 Signatories to permit applications and reports.	644
§ 270.12 Availability of Information and Protection of Trade and Business Secrets.	645
§ 270.13 Contents of Part A of the permit application.	646
§ 270.14 Contents of Part B: General requirements.	647
§ 270.15 Specific Part B information requirements for containers.	651
§ 270.16 Specific Part B information requirements for tank systems.	651
§ 270.17 Specific Part B information requirements for surface impoundments.	652
§ 270.18 Specific Part B information requirements for waste piles.	653
§ 270.19 Specific Part B information requirements for incinerators.	654
§ 270.20 Specific Part B information requirements for land treatment facilities.	655
§ 270.21 Specific Part B information requirements for landfills.	656
§ 270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.	657
§ 270.23 Specific Part B information requirements for miscellaneous units.	660
§ 270.24 Specific Part B information requirements for process vents.	660
§ 270.25 Specific Part B information requirements for equipment.	661
§ 270.26 Specific Part B information requirements for drip pads.	661
§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.	662
§ 270.28 Part B information requirements for post-closure permits.	663
§ 270.29 Permit Denial.	663
Subsection C – Permit Conditions	663
§ 270.30 Conditions applicable to all permits.	663
§ 270.31 Requirements for recording and reporting of monitoring results.	665
§ 270.32 Establishing permit conditions.	665
§ 270.33 Schedules of compliance.	665
§ 270.34 Health Monitoring and Hazard Identification.	666
Subsection D – Changes to Permits	666
§ 270.40 Transfer of permits.	666
§ 270.41 Modification or revocation and reissuance of permits.	667
§ 270.42 Permit modification at the request of the Permittee.	667
§ 270.43 Termination of permits.	679
Subsection E – Expiration and Continuation of Permits	679
§ 270.50 Duration of Permits.	679
§ 270.51 Continuation of Expiring Permits	679
Subsection F – Special Forms of Permits	679
§ 270.60 Permits by rule.	679
§ 270.61 Emergency permits.	680
§ 270.62 Hazardous waste incinerator permits.	680
§ 270.63 Permits for land treatment demonstrations using field test or laboratory analyses.	683
§ 270.64 Interim permits for UIC wells.	683
§ 270.65 Research, development, and demonstration permits.	684
§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.	684
§ 270.67 [Reserved]	687
§ 270.68 Remedial Action Plans (RAPs).	687
Subsection G -- Interim Status	687
§ 270.70 Qualifying for interim status.	687
§ 270.71 Operation during interim status.	687
§ 270.72 Changes during interim status.	687
§ 270.73 Termination of interim status.	688

Subsection H – Remedial Action Plans (RAPs)	689
§ 270.79 Why is this subpart written in a special format?	689
<i>General Information</i>	689
§ 270.80 What is a RAP?	689
§ 270.85 When do I need a RAP?	689
§ 270.90 Does my RAP grant me any rights or relieve me of any obligations?	690
<i>Applying for a RAP</i>	690
§ 270.95 How do I apply for a RAP?	690
§ 270.100 Who must obtain a RAP?	690
§ 270.105 Who must sign the application and any required reports for a RAP?	690
§ 270.110 What must I include in my application for a RAP?	690
§ 270.115 What if I want to keep this information confidential?	690
§ 270.120 To whom must I submit my RAP application?	691
§ 270.125 If I submit my RAP application as part of another document, what must I do?	691
<i>Getting a RAP Approved</i>	691
§ 270.130 What is the process for approving or denying my application for a RAP?	691
§ 270.135 What must the Director include in a draft RAP?	691
§ 270.140 What else must the Director prepare in addition to the draft RAP or notice of intent to deny?	691
§ 270.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?	692
§ 270.150 How will the Director make a final decision on my RAP application?	692
§ 270.155 May the decision to approve or deny my RAP application be administratively appealed?	692
§ 270.160 When does my RAP become effective?	693
§ 270.165 When may I begin physical construction of new units permitted under the RAP?	693
<i>How May my RAP be Modified, Revoked and Reissued, or Terminated?</i>	693
§ 270.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?	693
§ 270.175 For what reasons may the Director choose to modify my final RAP?	693
§ 270.180 For what reasons may the Director choose to revoke and reissue my final RAP?	694
§ 270.185 For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?	694
§ 270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?	694
§ 270.195 When will my RAP expire?	694
§ 270.200 How may I renew my RAP if it is expiring?	695
§ 270.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?	695
<i>Operating Under Your RAP</i>	695
§ 270.210 What records must I maintain concerning my RAP?	695
§ 270.215 How are time periods in the requirements in this subsection and my RAP computed?	695
§ 270.220 How may I transfer my RAP to a new owner or operator?	695
§ 270.225 What must the State or EPA Region report about noncompliance with RAPs?	695
<i>Obtaining a RAP for an Off-Site Location</i>	696
§ 270.230 May I perform remediation waste management activities under a RAP at a	

location removed from the area where the remediation wastes originated? 696

Subsection I – Integration with Maximum Achievable Control Technology (MACT) Standards 697

§ 270.235 Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events 697

**Section 273 —
STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**

Subsection A – General 697

§ 273.1 Scope. 697

§ 273.2 Applicability – Batteries. 697

§ 273.3 Applicability – Pesticides. 697

§ 273.4 Applicability – Mercury Thermostats. 698

§ 273.5 Applicability – Lamps. 698

[§ 273.6 Applicability – Consumer Electronic Items](#) **698**

§ 273.7 [Reserved] 699

§ 273.8 Applicability – household and conditionally exempt small quantity generator waste. 699

§ 273.9 Definitions. 699

Subsection B – Standards for Small Quantity Handlers of Universal Waste 700

§ 273.10 Applicability. 700

§ 273.11 Prohibitions. 700

§ 273.12 Notification. 700

§ 273.13 Waste management. 700

§ 273.14 Labeling/marketing. 702

§ 273.15 Accumulation time limits. 702

§ 273.16 Employee training. 702

§ 273.17 Response to releases. 703

§ 273.18 Off-site shipments. 703

§ 273.19 Tracking universal waste shipments. 703

§ 273.20 Exports. 703

Subsection C – Standards for Large Quantity Handlers of Universal Waste 703

§ 273.30 Applicability. 703

§ 273.31 Prohibitions. 703

§ 273.32 Notification. 704

§ 273.33 Waste management. 704

§ 273.34 Labeling/marketing. 705

§ 273.35 Accumulation time limits. 706

§ 273.36 Employee training. 706

§ 273.37 Response to releases. 706

§ 273.38 Off-site shipments. 706

§ 273.39 Tracking universal waste shipments. 707

§ 273.40 Exports. 707

Subsection D – Standards for Universal Waste Transporters. 707

§ 273.50 Applicability. 707

§ 273.51 Prohibitions. 707

§ 273.52 Waste management. 708

§ 273.53 Storage time limits. 708

§ 273.54 Response to releases. 708

§ 273.55 Off-site shipments 708

§ 273.56 Exports. 708

Subsection E – Standards for Destination Facilities	708
§ 273.60 Applicability	708
§ 273.61 Off-site shipments.	708
§ 273.62 Tracking universal waste shipments.	709
Subsection F – Import Requirements	709
§ 273.70 Imports.	709
Subsection G – Petitions to Include Other Wastes under § 273	709
§ 273.80 General.	709
§ 273.81 Factors for Petitions to Include Other Wastes under § 273.	709
Section 279.	
STANDARDS FOR THE MANAGEMENT OF USED OIL	
Subsection A – Definitions	711
§ 279.1 Definitions.	711
Subsection B – Applicability	712
§ 279.10 Applicability.	712
§ 279.11 Used oil specifications.	714
§ 279.12 Prohibitions.	714
Subsection C – Standards for Used Oil Generators	715
§ 279.20 Applicability.	715
§ 279.21 Hazardous waste mixing.	715
§ 279.22 Used oil storage.	716
§ 279.23 On-site burning in space heaters.	716
§ 279.24 Off-site shipments.	716
Subsection D – Standards for Used Oil Collection Centers and Aggregation Points	717
§ 279.30 Do-it-yourselfer used oil collection centers.	717
§ 279.31 Used oil collection centers.	717
§ 279.32 Used oil aggregation points owned by the generator.	717
Subsection E – Standards for Used Oil Transporter and Transfer Facilities	717
§ 279.40 Applicability.	717
§ 279.41 Restrictions on transporters who are not also processors or re-refiners.	718
§ 279.42 Notification.	718
§ 279.43 Used oil transportation.	718
§ 279.44 Rebuttable presumption for used oil.	719
§ 279.45 Used oil storage at transfer facilities.	719
§ 279.46 Tracking.	720
§ 279.47 Management of residues.	720
Subsection F – Standards for Used Oil Processors & Re-refiners	720
§ 279.50 Applicability.	720
§ 279.51 Notification.	721
§ 279.52 General facility standards.	721
§ 279.53 Rebuttable presumption for used oil.	724
§ 279.54 Used oil management.	724
§ 279.55 Analysis plan.	725
§ 279.56 Tracking.	726
§ 279.57 Operating record and reporting.	726

§ 279.58 Off-site shipments of used oil.	727
§ 279.59 Management of residues.	727
Subsection G – Standards for Used Oil Burners Who Burn Off-specification Used Oil for Energy Recovery	727
§ 279.60 Applicability.	727
§ 279.61 Restrictions on burning.	727
§ 279.62 Notification.	727
§ 279.63 Rebuttable presumption for used oil.	728
§ 279.64 Used oil storage.	728
§ 279.65 Tracking.	729
§ 279.66 Notices.	729
§ 279.67 Management of residues.	729
Subsection H – Standards for Used Oil Fuel Marketers	729
§ 279.70 Applicability.	729
§ 279.71 Prohibitions.	730
§ 279.72 On-specification used oil fuel.	730
§ 279.73 Notification.	730
§ 279.74 Tracking.	730
§ 279.75 Notices.	730
Subsection I – Standards for Use as a Dust Suppressant and Disposal of Used Oil	731
§ 279.80 Applicability.	731
§ 279.81 Disposal.	731
§ 279.82 Use as a dust suppressant.	731
Section 19 -- EFFECT OF FEDERAL REGULATIONS	732
Section 20 -- AUTHORITY.	732
Section 21-- DEFINITIONS.	732
Section 22 -- STATE/EPA MEMORANDUM OF AGREEMENT	732
Section 23 -- AUTHORITY	732
Section 24.-- (RESERVED)	732
Section 25. -- FEES ON THE GENERATION OF HAZARDOUS WASTE	733
Section 26-- CRITERIA FOR LISTING HAZARDOUS SUBSTANCE SITES	733
Section 27 -- (RESERVED)	734
Section 28 -- PENALTY POLICY AND ADMINISTRATIVE PROCEDURES	735
Section 29 – SEVERABILITY	735
Section 30 – EFFECTIVE DATES	735

Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated October 24, 2003, are amended as itemized below:

1. The definition of “universal waste” at **Section 260.10** is revised to add new subparagraph (5) as follows:

§ 260.10 Definitions.

“**Universal Waste**” means any of the following hazardous wastes that are managed under the universal waste requirements of Section 273 of this regulation:

- (1) Batteries as described in § 273.2 of this regulation;
- (2) Pesticides as described in § 273.3 of this regulation;
- (3) Thermostats as described in § 273.4 of this regulation; ~~and~~
- (4) Lamps as described in § 273.5 of this regulation; and
- (5) Consumer electronic items as described in § 273.6 of this regulation.

SECTION 261 — IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

§ 261.5 [Amended]

2. **Section 261.5(j)** is amended by removing both phrases, “if it is destined to be burned for energy recovery.”

3. **Section 261.9** is amended to add new subparagraph (e) as follows:

§ 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under Sections 262 through 270 of this regulation except as specified in Section 273 of this regulation and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under Section 273:

- (a) Batteries as described in § 273.2;
- (b) Pesticides as described in § 273.3 of this regulation;
- (c) Thermostats as described in § 273.4 of this regulation; ~~and~~
- (d) Lamps as described in § 273.5 of this regulation; and
- (e) Consumer electronic items (“E-wastes”) as described in § 273.6 of this regulation.

SECTION 262 — STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

4. **Section 262.13(f)** is amended to read as follows:

§ 262.13 State Requirements for Transportation of Waste from Generators of over 100 kgs per Month.

(f) A TSDF may not accept hazardous waste without a generator EPA ~~or PCB~~ identification number on the manifest, unless specific prior authorization has been obtained from ~~this~~ the Department.

SECTION 264 — STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. **Section 264.140(b)** is revised by amending subparagraph (2) and adding new subparagraphs (5) and (6) as follows:

§ 264.140 Applicability.

* * * * *

(b) The requirements of §§ 264.144 and 264.145 apply only to owners and operators of:

- (1) Disposal facilities,
- (2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §§ 264.228; and 264.258;
- (3) Tank systems that are required under § 264.197 to meet the requirements for landfills.
- (4) Containment buildings that are required under § 264.1102 to meet the requirements for landfills.

(5) Open burn/open detonation units where soil and/or groundwater contamination has been identified as a result of operation of the unit.

6. **Section 264.141(g)** is amended to add a definition for *captive insurance* as follows:

§ 264.141 Definitions of terms as used in this Subsection.

* * * * *

(g) In the liability insurance requirements the terms “bodily injury” and “property damage” shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

* * * * *

“Captive insurance” means insurance for which the insurer underwrites insurance policies solely for its parent corporation or for other affiliates controlled by its parent.

* * * * *

7. **Section 264.143(e)** and **(f)(3)** and **(5)** are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

e) Closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Director. An owner or operator of a new facility must submit the certificate of insurance and a copy of the insurance policy to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be 1) licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in~~ one or more States as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor’s; Aaa, Aa, or A if rated by Moody’s, or A++, A+, A, or A - if

rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test and corporate guarantee for closure. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements;

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted; and

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

* * * * *

8. Section 264.145(e) and (f)(3) and (5) are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(e) Post-closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance and a copy of the insurance policy to the Director. An owner or operator of a new facility must submit the certificate of insurance to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States.~~ as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test and corporate guarantee for post-closure care. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.; **and**

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ **four** items specified in paragraph (f)(3) of this section.

9. **Section 264.147(a)(1), (b)(1) and (f)(3)** are revised to read as follows:

§ 264.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Director, or Directors if the facilities are located in more than one state. ~~If requested by a Director, the~~ owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States.~~ **as recognized by the Arkansas Insurance Department; and must have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.**

* * * * *

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, ~~or~~ disposal miscellaneous unit that is used to manage hazardous waste, or open burn/open detonation unit where soil and/or groundwater contamination has been identified as a result of operation of the unit, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b) (1), (2), (3), (4), (5), or (6), of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Director, or Directors if the facilities are located in more than one state. ~~If requested by a Director,~~ The owner or operator must provide a signed duplicate original of the insurance policy. An owner or operator of a new facility must submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States,~~ as recognized by the Arkansas Insurance Department; and must have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best.. Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(f) Financial test for liability coverage. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii):

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following ~~three~~ four items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

SECTION 265 — INTERIM STATUS STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subsection G – Closure and Post-Closure

10. **Section 265.110(b)** is revised to add new subparagraph (5), to read as follows:

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111 through 265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.116 through 265.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 or § 265.258;

(3) Tank systems that are required under § 265.197 to meet requirements for landfills.

(4) Containment buildings that are required under § 265.1102 to meet the requirement for landfills, and

(5) Open burn/open detonation units where soil and/or groundwater contamination has been identified as a result of operation of the unit.

11. **Section 265.143(d)(1)** and **(e)(3)** are revised to read as follows:

§ 265.143 Financial assurance for closure.

(d) Closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Director. By the effective date of these regulations the owner or operator must submit to the Director a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance *and a copy of the applicable insurance policy* to the Director or establish other financial

assurance as specified in this section. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States, as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best..~~ Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(e) Financial test and corporate guarantee for closure.

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

12. Section 265.145(d)(1) and (e)(3) are revised to read as follows:

§ 265.145 Financial assurance for post-closure.

* * * * *

(d) Post-closure insurance. (1) An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance and a copy of the applicable insurance policy to the Director. By the effective date of these regulations the owner or operator must submit to the Director a letter from an insurer stating that the insurer is considering issuance of post-closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance to the Director or establish other financial assurance as specified in this section. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more States, as recognized by the Arkansas Insurance Department; and 2) have a current rating of AAA, AA, or A as rated by Standard & Poor's; Aaa, Aa, or A if rated by Moody's, or A++, A+, A, or A- if rated by A.M. Best..~~ Captive insurance shall not be used to provide financial assurance under the requirements of this Regulation.

* * * * *

(e) Financial test and corporate guarantee for post-closure care. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria either of paragraph (e)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.; and

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (e)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (e)(3) of this section.

* * * * *

13. Section 265.147 (a)(1), (b)(1), and (f)(3) are revised to read as follows:

§ 265.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph. Captive insurance shall not be used to provide such liability coverage under the requirements of this Regulation.

* * * * *

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, ~~or~~ land treatment facility which is used to manage hazardous waste, or open burn/open detonation unit where soil and/or groundwater contamination has been identified as a result of operation of the unit, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b) (1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph. Captive insurance shall not be used to provide such liability coverage under the requirements of this Regulation.

* * * * *

(f) Financial test for liability coverage. (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1)(i) or (ii) of this section:

* * * * *

(3) To demonstrate that he meets this test, the owner or operator must submit the following ~~three~~ four items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by §§ 264.143(f), 264.145(f), 265.143(e), and 265.145(e), and liability coverage, he must submit the letter specified in § 264.151(g) to cover both forms of financial responsibility; a separate letter as specified in § 264.151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) A copy of the owner's or operator's independently audited financial statements for the latest completed fiscal year, with all notes and attachments.

* * * * *

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information must consist of all ~~three~~ four items specified in paragraph (f)(3) of this section.

* * * * *

SECTION 270 — ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

14. Section 270.1(c)(2)(viii) is revised to add new subparagraph (E) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(c) * * * * *

(2) * * * * *

(viii) Universal waste handlers and universal waste transporters (as defined in § 260.10) managing the wastes listed below. These handlers are subject to regulation under § 273.

(A) Batteries as described in § 273.2;

(B) Pesticides as described in § 273.3 of this regulation;

(C) Thermostats as described in § 273.4 of this regulation; ~~and~~

(D) Lamps as described in § 273.5 of this regulation; ~~and~~

(E) Consumer electronic items as described in § 273.6 of this regulation.

Subsection D – Changes to Permits

15. Section 270.40(b) is revised to read as follows:

§ 270.40 Transfer of permits.

* * * * *

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Section 264, Subsection H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying

with the requirements of that Subsection. The new owner or operator must demonstrate compliance with Subsection H requirements ~~within six months of~~ not later than the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subsection H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subsection H as of the date of demonstration.

* * * * *

SECTION 273 — STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

Subsection A – General

16. Section 273.1 is revised to add new subparagraph (a)(5) to read as follows:

§ 273.1 Scope.

- (a) This part establishes requirements for managing the following:
- (1) Batteries as described in § 273.2;
 - (2) Pesticides as described in § 273.3;
 - (3) Thermostats as described in § 273.4; ~~and~~
 - (4) Lamps as described in § 273.5; and
 - (5) Consumer electronic items as described in § 273.6.

17. Section 273 is revised to add new Section 273.6 to read as follows:

§ 273.6 Applicability – Consumer electronic items.

(a) Consumer electronic items covered under this Section 273. The requirements of this section apply to persons managing consumer electronic items as described in § 273.9, except those listed in paragraph (b) of this section.

(b) Consumer electronic items not covered under this Section 273. The requirements of this section do not apply to persons managing the following consumer electronic items:

(1) Consumer electronic items that are not yet wastes under section 261 of this regulation as provided in paragraph (c) of this section.

(2) Consumer electronic items that are not hazardous waste. A consumer electronic item is a hazardous waste if it exhibits one or more of the characteristics identified in section 261, subsection C of this regulation.

(c) Generation of consumer electronic wastes.

(1) A used consumer electronic item becomes a waste on the date it is discarded.

(2) An unused consumer electronic item becomes a waste on the date the handler decides to discard it.

18. Section 273.9 is revised to add the following definitions, in alphabetical order:

§ 273.9 Definitions.

* * * * *

“Cathode ray tube” or “CRT” means a vacuum tube, composed primarily of glass, which is the video display component of a television or computer monitor. An intact CRT means a CRT remaining inside the monitor whose vacuum has not been released. A broken CRT means glass removed from the monitor after the vacuum has been released.

“Consumer electronic item” means an electronic item containing an intact or broken cathode ray tube, (e.g., television, computer monitor, or other cathode ray tube monitor or display device), personal

computer or computer component, audio and/or stereo player, videocassette recorder/player, digital videodisk (DVD) recorder/player, video camera, telephone, facsimile or copying machine, cellular telephone, wireless paging device, or video game console.

* * * * *

“Large Quantity Handler of Universal Waste” means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (~~batteries, pesticides, thermostats, or lamps~~, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

* * * * *

“Small Quantity Handler of Universal Waste” means a universal waste handler (as defined in this section) who does not accumulate more than 5,000 kilograms total of universal waste (~~batteries, pesticides, thermostats or lamps~~, calculated collectively) at any time.

* * * * *

“Universal Waste” means any of the following hazardous wastes that are managed under the universal waste requirements of Section 273 of this regulation:

- (1) Batteries as described in § 273.2;
- (2) Pesticides as described in § 273.3;
- (3) Thermostats as described in § 273.4; ~~and~~
- (4) Lamps as described in § 273.5; ~~and~~
- (5) Consumer electronic items as described in § 273.6.

19. Section 273.13 is revised to add new subparagraph (d), to read as follows:

§ 273.13 Waste Management

* * * * *

(d) Consumer electronic items. A small quantity handler of universal waste must manage waste consumer electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any waste consumer electronic item in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the items. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste must immediately clean up and place in a container any CRT that is broken and must place in a container any CRT that shows evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the items and must lack evidence of leakage, spillage or damage that could cause leakage or releases of lead or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may conduct the following activities as long as cathode ray tubes are not broken, and the casing of battery cells is not breached and remains intact and closed):

(i) sorting consumer electronic items by type;

(ii) mixing consumer electronic item types in one container;

(iii) disassembling consumer electronic items to separate CRTs, batteries, circuit boards, or other components to facilitate the recycling or reclamation of these components;

(4) A small quantity handler of universal waste who disassembles consumer electronic items for the purpose of facilitating the recycling or reclamation of individual components of those items must determine whether those components and/or other solid waste resulting from the activities listed above exhibit a characteristic of hazardous waste identified in § 261, Subsection C.

(i) If the separated component of the consumer electronic items and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Sections 260 through 270. The handler is considered the generator of this hazardous waste and/or other waste and is subject to § 262 of this Regulation.

(ii) If the separated component or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

20. Section 273.14 is revised to add new subparagraph (f), to read as follows

(f) Universal waste consumer electronic items (i.e., each item), or a container in which the consumer electronic items are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste – Consumer Electronic Items”, or “Electronic Wastes,” or “Used Electronic Items;”

21. Section 273.33 is revised to add new subparagraph (d), to read as follows:

§ 273.33 Waste management.

* * * * *

(d) Consumer electronic items. A large quantity handler of universal waste must manage waste consumer electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any waste consumer electronic item in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the items. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste must immediately clean up and place in a container any CRT that is broken and must place in a container any CRT that shows evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the items and must lack evidence of leakage, spillage or damage that could cause leakage or releases of lead or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may conduct the following activities as long as cathode ray tubes are not broken and the casing of battery cells is not breached and remains intact and closed):

(i) sorting consumer electronic items by type;

(ii) mixing consumer electronic item types in one container;

(iii) disassembling consumer electronic items to separate CRTs, batteries, circuit boards, or other components to facilitate the recycling or reclamation of these components;

(4) A large quantity handler of universal waste who disassembles consumer electronic items for the purpose of facilitating the recycling or reclamation of individual components of those items must determine whether those components and/or other solid waste resulting from the activities listed above exhibit a characteristic of hazardous waste identified in § 261, Subsection C.

(i) If the separated component of the consumer electronic items and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Sections 260 through 270. The handler is considered the generator of this hazardous waste and/or other waste and is subject to § 262 of this Regulation.

(ii) If the separated component or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

22. Section 273.34 is revised to add new subparagraph (f), to read as follows

(f) Universal waste consumer electronic items (i.e., each item), or a container in which the consumer electronic items are contained, must be labeled or marked clearly with any one of the following phrases: “Universal Waste – Consumer Electronic Items”, or “Electronic Wastes,” or “Used Electronic Items;”

SECTION 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

23. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

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(i) Used oil containing PCBs. ~~In addition to the requirements of this Section, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e) and Sections 262 and 263 of this regulation.~~ Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Section unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Section may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Section, but is subject to regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Regulation or 40 CFR Part 761.

24. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

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(b) *On-specification used oil delivery.* A generator, transporter, processor/rerefiner, or burner who first claims that used oil that is to be burned for energy recovery meets the ~~used oil fuel~~ specifications under § 279.11 must keep a record of each shipment of used oil to ~~an on-specification used oil burner~~ the facility to which it delivers the used oil. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under ~~§ 279.11~~ § 279.72(a).

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