

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

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

**DOCKET NO. 07-007-R**

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

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

1. The U.S. Environmental Protection Agency has promulgated specific changes to the hazardous waste management regulations (40 CFR Parts 260-279) published in the *Federal Register* between August 5, 2005, and December 31, 2006, which affect the hazardous waste management program implemented by the Department pursuant to the Hazardous Waste Management Act and the Commission’s Regulation No. 23 (Hazardous Waste Management).
2. Specific regulatory amendments to the federal hazardous waste management program which are proposed for incorporation into Regulation No. 23 include the following *Federal Register* notices:
  - (A) **Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.** This federal revision added benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste under the federal Resource Conservation and Recovery Act and as previously incorporated in Regulation No. 23. Scrubber waters derived from the combustion of any of these exempted solvents also are included in this exemption. This revision also added an option which allows generators to directly measure solvent chemical levels at the headworks of their wastewater

treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, this revision extended the eligibility for and use of the *de minimis* exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

**(B) National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.** This federal revision finalized the national emission standards for hazardous air pollutants (NESHAP) which apply to hazardous waste combustion facilities (HWCs), i.e., hazardous waste-burning incinerators, cement kilns, lightweight aggregate kilns, industrial, commercial, and institutional boilers and process heaters, and hydrochloric acid production furnaces. This is a multimedia rule which affects both air regulations addressed by 40 CFR 63 and hazardous waste requirements in 40 CFR Parts 264, 265, 266, and 270. This proposal will incorporate the hazardous waste components of this revision into Sections 264, 265, 266, and 270 of Regulation No. 23.

**(C) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396, June 20, 2006.** This federal revision amends Section 261, Appendix IX is amended to remove a delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting.

**(D) Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.** This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register* over the past several years. This revision does not create any new or additional regulatory requirements for waste handlers or management facilities.

**(E) Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.** This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer

electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

(F) **Sections 264.52(b) and 265.52(b)** are amended to allow owners and operators of hazardous waste treatment, storage, and disposal facilities to develop a single, integrated contingency plan. This will eliminate confusion for facilities which must prepare multiple contingency plans in order to comply with multiple regulatory requirements and subsequently decide which plan is applicable to a particular emergency. Such an integrated plan will also allow first responders (such as firefighters) with a means to comply with multiple regulatory requirements, and simplify coordination with local emergency planning committees. This revision specifically authorizes the use of an integrated contingency plan; recommends that such plans be developed based upon the federal Integrated Contingency Plan Guidance published on June 6, 1996 at 61 FR 28641; and includes guidance that when modifications are made to non-RCRA portions of an integrated contingency plan (e.g. those provisions that do not address the management of hazardous wastes or response to a hazardous waste incident or emergency) such changes would not trigger the need for a RCRA permit modification.

(G) **Sections 264.73(b), 265.73(b), 266.102(e) and 266.103** are revised to require the retention of specific records at permitted and interim status treatment, storage, and disposal facilities to be kept in the facility's operating record until closure of the facility, and remove the requirement that copies of these records be submitted to the Department. This amendment additionally extends the time that specific records for permitted and interim status combustion facilities (incinerators, boilers, and industrial furnaces) be kept in the facility's operating records from three years to five years, consistent with the record retention requirements for these facilities under the federal Clean Air Act.

(H) **Sections 264.193(a), 264.251(c), 264.314(a), (b), and (f), 264.1100, 264.1101(c)(2), 265.193(a), 265.314(a), (b), and (g), 265.1100, 265.1101(c), 265.221(a), and 265.301(a)** are amended to reflect the passage of specific deadlines in these provisions which have already passed and indicate that these are now current, ongoing requirements. No additional requirements are created by these revisions.

3. The Department is proposing the following state-specific revisions to the state-specific provisions of Regulation No. 23:

(A) **Section 264.18(d)** is amended to account for the recent name change of the Arkansas Natural Resource Conservation Commission.

(B) **Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

4. Line-by-line details of the proposed revisions are listed at Exhibit “A.” A detailed discussion of each revision is provided in the Statement of Basis and Purpose at Exhibit “F.”

5. *Compliance with Act 143 of 2007 (formerly Executive Order 05-0)4*: The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 23 included in this proposed rulemaking substantially codify existing state and federal regulations. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)). An overview of the projected impact of each specific provision proposed for adoption in this regulation is included in the Economic Impact/Environmental Benefit Analysis at Exhibit “D,” and in the Statement of Basis and Purpose at Exhibit “F.”

6. Ryan Benefield, Chief, Hazardous Waste Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. (Due to the size of Regulation No. 23, only the specific sections to be amended are addressed at Exhibit “A”. These revisions will be incorporated in the whole of the Regulation at the completion of this rulemaking.) The questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee is attached at Exhibit “B.” The legislative Financial Impact Statement is attached at Exhibit “C.” A statement concerning compliance with the provisions of Act 143 of 2007 is attached at Exhibit “D.” A copy of the completed economic impact/environmental benefit analysis pursuant to Regulation No. 8.3.5.2 is attached at Exhibit “E.” A copy of

the initial Statement and Basis of Purpose is attached at Exhibit “F”. A copy of a regulatory flexibility analysis prepared pursuant to E.O. 05-04 and Act 143 of 2007 is attached at Exhibit “G.” A proposed Minute Order which initiates this request is attached at Exhibit “H.”

WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and promulgate the proposed amendments to Regulation No. 23 for public notice and comment.

Respectfully submitted,

---

J. RYAN BENEFIELD, P.E.  
Chief, Hazardous Waste Division  
Arkansas Department of Environmental Quality  
(501) 682-0831