

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

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

DOCKET NO. 08-002-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, 2007, 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) **Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.** This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same

ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits.

(B) 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.

(C) 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, and which implements Section 112(d) of the federal Clean Air Act by requiring that HWCs meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT). This is an amendment to previously promulgated HWC MACT requirements (previously adopted by the Commission) which is neither more nor less stringent than existing requirements, in that it makes explicit the requirement to carry out risk assessments and the imposition of permit conditions necessary to ensure protection of human health and the environment available under provisions of the RCRA omnibus authority and its implementing regulations (Regulation No. 23 § 270.32(b)).

(D) Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16862-16815, April 4, 2006. This federal revision implements changes to the RCRA hazardous waste management program to reduce the paperwork burden these requirements impose on the states, EPA, and regulated businesses. EPA estimates that *on a national basis*, the total annual hour savings under this rule would range from 22,000 hours to 37,500 hours per year, and total annual cost savings would range from approximately \$2 million to \$3 million. These revisions are expected to streamline information collection requirements. These revisions retain a number of state-specific requirements in sections of the regulation affected by these changes, to include additional training requirements for hazardous waste facility employees at Sections 264.16(f) and 265.16(f), and the requirement that professional engineers who certify specific facility design plans and construction documents be registered by the state of Arkansas.

(E) 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, and this delisting decision was withdrawn by EPA.

(F) 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.

(G) 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.

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. In August through December of 2007, ADEQ initiated a series of meetings with affected stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.

5. 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, Exhibit "F."

6. *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.”

7. 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,

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