Statement of Basis and Purpose

The Arkansas Department of Environmental Quality maintains and administers a hazardous waste management program to implement the provisions of the Arkansas Hazardous Waste Management Act (Arkansas Code, Annotated, §§ 8-7-201 *et seq*.) and to provide a program which is, at a minimum, equivalent in force and effect to the Federal program as established by the Resource Conservation and Recovery Act, as amended, including but not limited to the Hazardous and Solid Waste Amendments. To this end, the Department, through the procedures of the Arkansas Pollution Control and Ecology Commission, conducts rulemaking at least annually in order to adopt the additions and revisions to the federal hazardous waste regulations promulgated by EPA during the preceding year and update the State hazardous waste program in order to maintain its equivalency to federal requirements.

The background, purpose, and specific need for each revision is discussed separately below.

I. Federally-initiated changes to Regulation No. 23 fall under five measures as follows:

1. 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. No change is made to the permit fee schedule at Section 6 of this regulation; standardized permits will be assessed the same application, maintenance, and renewal fees as normal RCRA permits.

2. Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks Exemptions"); 70 FR 57784-57785, October 4, 2005.

Facilities which treat and subsequently discharge their hazardous wastes through a wastewater treatment facility or publicly-owned treatment works which is subject to a permit under the federal Clean Water Act generally do not require an additional RCRA permit for such treatment since protection of human health and the environment must be addressed by the standards of the wastewater discharge permit. Hazardous wastes which are treated in this manner are considered to be conditionally-exempt under the provisions of Regulation No. 23 § 261.5(c)(2).

This federal revision adds benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are so exempted from the definition of hazardous waste. The scrubber waters derived from the combustion of any of the exempted solvents also are included in this exemption. This revision also adds an option to allow 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 extends the eligibility for the *de minimis* exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

3. 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 incorporates the RCRA hazardous waste components of this rule into Sections 264, 265, 266, and 270 of Regulation No. 23.

4. Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16902-16915, April 4, 2006.

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an "Economic Background Document" as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA's assessment of the costs and benefits of these measures.

This proposal retains existing state-specific requirements for the qualifications of professionals who prepare and certify specific construction and inspection documents, to include the requirement that professional engineers who prepare and certify these documents must be registered by the Arkansas Board of Professional Engineers and Land Surveyors, as well as the requirement that they be independent of the regulated facility owner or operator. These requirements have been previously determined by the Department and the U.S. EPA to be more stringent than the corresponding federal requirements, and as such are not superseded by the revisions to the corresponding federal rules.

5. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396 (June 20, 2006).

This federal revision amended **Section 261, Appendix IX** to remove an earlier Federal 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.

6. 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 regulatory requirements.

7. 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.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04)*:** This proposed rulemaking would substantially codify existing, revised Federal regulations into the corresponding State regulation (See A.C.A. § 25-15-302(a)(1)(C)). As such, they are not subject to the provisions of A.C.A. § 25-15-302. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of December 1, 2007, approximately 2200 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a "small business," but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of December 1, 2007, 279 SGQs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of "small business" as defined by the Act.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

These amendments create no additional requirements or costs for small business. The Federal revisions proposed to be adopted pursuant to this rulemaking are actually less stringent than the pre-existing Federal regulations they are replacing and the state adoption of these provisions will maintain equivalence and equity with the corresponding federal rules. Affected small businesses should recognize reduced compliance costs once these new rules are in effect within the State.

Requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business' size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to than the existing regulations, small businesses should realize reduced burden and costs in carrying out these provisions within their operations.

The revisions proposed here are equivalent to the corresponding federal rules in 40 CFR. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately, so there is and will be no significant differences in the compliance requirements from those is adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

II. State-initiated changes in the provisions of Regulation No. 23.

ADEQ is not proposing substantive changes in the State provisions of Regulation No. 32 with the exception of the following:

1. **Section 264.18(d)** is amended to reflect the recent name change of the Arkansas Natural Resources Conservation Commission.
2. **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.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04)*:** These revisions make typographic corrections to existing state provisions in the Regulation. As such, they substantially codify existing State regulations and are not subject to the provisions of A.C.A. § 25-15-302.