

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

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

DOCKET NO. 09-005-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 December 31, 2007, and June 30, 2009, 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) Regulation of Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System to Produce Synthesis Gas 73 FR 57, January 2, 2008. This federal revision amends an existing exclusion from the definition of solid waste that applies to oil-bearing hazardous secondary materials generated at a petroleum refinery when these materials are recycled by inserting them back into the petroleum refining process and certain other conditions are met. The exclusion allows these materials to be inserted into the same petroleum refinery where they are generated, or sent

directly to another petroleum refinery. The proposal would also add “gasification” to the list of already recognized petroleum refinery processes into which oil-bearing hazardous secondary materials can be legitimately recycled, and add a definition for the term “gasification.”

(B) National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments. 73 FR 18970-18984; April 8, 2008. This federal revision finalized amendments to the October 12, 2005 rule - National Emission Standards for Hazardous Air Pollutants (NESHAP): Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II Standards). It clarifies specific compliance monitoring provisions and corrects typographical errors and omissions in the earlier federal rule. This is an amendment to the Hazardous Waste Combustor Maximum Achievable Control Technology (HWC MACT) requirements previously adopted by the Commission, which are 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)).

(C) Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019. 73 FR 31768, June 4, 2008. This federal revision amends the F019 waste listing to exempt the wastewater treatment sludge generated from zinc phosphating processes used in automobile assembly, provided the wastes are not placed outside on the land prior to shipment to a landfill for disposal and the waste is disposed in a landfill unit subject to certain liner requirements. Wastes that meet these conditions will be exempted from the listing from their point of generation, and will not be subject to any RCRA Subtitle C management requirements for generation, storage, transport, treatment, or disposal. Generators will be required to maintain records on site to show that their waste meets the conditions of this listing.

(D) Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities; (73 FR 72954-72960), December 1, 2008. This Federal revision establishes an alternative set of generator requirements applicable to laboratories owned by universities and eligible teaching hospitals to address the specific nature of hazardous waste generation and accumulation in these laboratories.

Two Federal revisions promulgated during the window addressed in this update have not been included in this petition. These are (1) **Revisions to the Definition of Solid Waste.** 73 FR 64667-64716; October 30, 2008, also known as the

“Hazardous Secondary Materials rule,” and (2) **Expansion of RCRA Comparable Fuel Exclusion** (73 FR 77953-78017; December 19, 2008). Both these rules were published in the closing days of the previous presidential administration, and were subsequently challenged to the Environmental Appeals Board. EPA began a series of hearings in late June, 2009 to formulate an answer to the issues raised, determine whether the Hazardous Secondary Materials Rule should be modified or left in place; and is considering rescinding the expansion of the Comparable Fuels rule. ADEQ has opted to defer adoption and implementation of these revisions pending the resolution of EPA’s review of these rules.

In the final copy of Regulation No. 23 filed for adoption by the Commission on April 25, 2008, the proposed revisions to Section 261 of the Regulation were mistakenly left out. This included components of four federal revisions which had been proposed for adoption at that time:

- **Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005**, which added an exemption for *de minimis* amounts of benzene and 2-ethoxyethanol in specific wastewaters;
- **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, Table 1 to remove a delisting decision for wastewater treatment sludges (F006 filter cake) 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. (Tokusen USA has since applied for a new delisting of the wastewater treatment sludges from the revised process, and this petition is currently being reviewed by EPA Region 6 and ADEQ staff.)
- The revisions to Section 261 contained in **Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006**; which corrected certain omissions, typographical errors, misspellings, citations, etc. in the text of the federal regulations. These revisions do not create any new regulatory requirements.
- The conditional exemption for cathode ray tubes (CRTs) from the RCRA definition of solid waste if specific

conditions are met, as, published in **Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006**. This exemption will create an additional option for and streamline management requirements for recycling used CRTs and glass removed from CRT, and is intended to encourage the recycling and reuse of CRTs and CRT glass.

The missing provisions in Section 261 from these federal revisions, whose other components were adopted in the April 2008 update to Regulation No. 23, are re-promulgated in this petition for correction and incorporation into the Regulation.

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

(A) **Section 3(b)** is amended to reflect the updated window (through June 30, 2009) for Federal regulations adopted and/or incorporated by reference.

(B) **Section 6(v)** is removed and reserved, as the Department has implemented the federal Uniform Manifest Rule and no longer sells or requires the use of a state-specific hazardous waste manifest.

(C) **Sections 260.20(d), (e), (f)(2), and 270.7(e)(2)(ii)** are revised to update revised citations to the Commission's Regulation No. 8, wherein the chapters and paragraphs were renumbered during its most recent revision in January, 2009.

(D) **Chapter 4** (Regulations Promulgated Pursuant to Act 479 of 1985) is removed and reserved, as these regulations have been moved to Regulation No. 30. **Section 25** (Fees on the Generation of Hazardous Waste) has been renumbered and moved to a new paragraph, **Section 6(aa)**.

4. Line-by-line details of the proposed revisions are listed at Exhibit "A."

5. *Compliance with Act 143 of 2007 (formerly Executive Order 05-04)*: The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. (A.C.A. § 25-15-302(a)(2)) 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)(2)(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.”

7. Clyde Rhodes, 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 Legislative 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. 8.812 is attached at Exhibit “E.” A copy of a regulatory flexibility analysis prepared pursuant to Executive Order 05-04 and Act 143 of 2007 is attached at Exhibit “F.” A proposed Minute Order which initiates this request is attached at Exhibit “G.”

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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