

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

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

DOCKET NO. 10-007-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 July 1, 2009, and August 31, 2010, 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) Revisions to the Requirements for Trans-boundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes. 75 FR 1253-1262; January 8, 2010. This federal rule implemented changes to the agreements concerning the trans-boundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), established notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specified that all exception reports concerning hazardous waste exports be sent to the

International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and requires U.S. receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

(B) Hazardous Waste Technical Corrections and Clarifications Rule. 75 FR 12989-13009, March 18, 2010; and 75 FR 31716-31717, June 4, 2010. This federal rule made a number of technical changes that correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the *Federal Register*, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various federal RCRA final rules. This rulemaking was amended on June 4, 2010 (75 FR 31716-31717) by withdrawing six of the revisions set out in the original *Federal Register* notice.

(C) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion. 75 FR 51671-51678, August 23, 2010. This federal establishes a delisting decision for specific wastes produced at the Tokusen, Inc. plant in Conway, which otherwise would be considered F006 hazardous wastes. EPA announced its final decision to delist these wastes on August 23, 2010; this action incorporates the decision into Regulation No. 23 in order to place the delisting into effect.

(D) An editorial correction is made to incorporate a federal revision to **Section 264.1062(a)**, deleting paragraph (a)(2) and consolidating the content to a single paragraph (a). This revision was part of the federal Burden Reduction Rule (71 FR 16862) adopted by the Commission in May 2008, however this amendment was inadvertently omitted when these revisions were incorporated into the body of Regulation No. 23 submitted to the Secretary of State at the completion of that rulemaking.

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 August 31, 2010) for Federal regulations adopted and/or incorporated by reference.

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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