

**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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EXHIBIT A:
PROPOSED RULE CHANGES

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION No. 23 HAZARDOUS WASTE MANAGEMENT

INITIAL DRAFT

Presented to the Pollution Control and Ecology Commission
on
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COMMISSION**

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(HAZARDOUS WASTE MANAGEMENT)

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Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated April 23, 2010, are amended as itemized below:

Section 3. AMENDMENT AND UPDATE OF REGULATION No. 23 (HAZARDOUS WASTE MANAGEMENT)

1. Section 3(b) is amended to read as follows:

* * * * *

(b) **Incorporations by Reference.** The regulations listed immediately below, promulgated by the U.S. Environmental Protection Agency, are hereby adopted as provisions of this Chapter as though set forth herein line for line and word for word with the exception that all references therein to “Administrator”, “Regional Administrator”, “Director”, or “State Director” shall be considered references to the “Director of the Arkansas Department of Environmental Quality”; and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Arkansas Department of Environmental Quality”. All references elsewhere in this chapter to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Regulation shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Regulation.

Title 40 Code of Federal Regulations:

(1) Appendix IX of Part 261 (with the exception of delisting decisions for Arkansas companies; for analogous provisions, see Reg. 23 § 261 Appendix IX);

(2) Appendix IX of Part 266; and

(3) Subpart A of Part 124 with the following exceptions: 124.1, 124.2, 124.3(b), 124.3(d), 124.3(e), 124.4, 124.5(b), 124.5(e), 124.5(g), 124.6(b), 124.9, 124.10(a)(1)(i), 124.10(a)(1)(iv), 124.10(a)(1)(v), 124.12(e), 124.14, 124.15, 124.16, 124.18, 124.19, and 124.21 (see also APC&EC Regulation No. 8 (Administrative Procedures) for analogous provisions as referenced in § 270 of this Regulation.)

(4) All as adopted as final rules (including “interim final rules” and “technical amendments”) published in the *Federal Register* by the U.S. Environmental Protection Agency on or before ~~June 30, 2009~~ August 31, 2010.

2. Amend Section 260.10, the definition of “New hazardous waste management facility or new facility” by removing the date “October 21, 1976” and adding in its place the date “November 19, 1980”.

§ 260.10 Definitions.

When used in Sections 260 through 279 of this regulation, the following terms have the meanings given below:

* * * * *

“**New hazardous waste management facility**” or “**new facility**” means a facility which began operation, or for which construction commenced after ~~October 21, 1976~~ November 19, 1980. (See also “Existing hazardous waste management facility”.)

* * * * *

3. Amend Section 260 by removing Appendix I.

Appendix I to Section 260 — Overview of Subtitle C Regulations

~~The Department believes that there are many people who suspect, but are not sure, that their activities are subject to control under the RCRA Subtitle C rules. This appendix is written for these people. It is designed to help those who are unfamiliar with the hazardous waste control program to determine with which, if any, of the regulations they should comply.~~

Definition of Solid Waste

~~The first question which such a person should ask himself is: “Is the material I handle a solid waste?” If the answer to this question is “No”, then the material is not subject to control under RCRA and, therefore, the person need not worry about whether he should comply with the Subtitle C rules.~~

~~Section 261.2 of this regulation provides a definition of “solid waste” which expands the statutory definition of that term given in section 1004(27) of RCRA. This definition is diagrammed in Figure 1 below.~~

~~Figure 1 explains that all materials are either: (1) Garbage refuse, or sludge; (2) solid, liquid, semi-solid or contained gaseous material; or (3) something else. No materials in the third category are solid waste. All materials in the first category are solid waste. Materials in the second category are solid waste unless they are one of the five exclusions specified in § 261.4(a).~~

Definition of Hazardous Waste

~~If a person has determined that his material is a “solid waste”, the next question he should ask is: “Is the solid waste I handle a hazardous waste?”~~

~~Hazardous waste is defined in § 261.3 of this regulation. Section 261.3 provides that, in general, a solid waste is a hazardous waste if: (1) It is, or contains, a hazardous waste listed in Subsection D of Section 261 of this regulation, or (2) the waste exhibits any of the characteristics defined in Subsection C of Section 261. However, Sections 260 and 261 also contain provisions which exclude (§§ 261.4(b), 260.20, and 260.22) certain solid wastes from the definition of “hazardous waste”, even though they are listed in Subsection D or exhibit one or more of the characteristics defined in Subsection C. Figure 2 depicts the interplay of these special provisions with the definition of “hazardous waste”. It presents a series of questions which a person should ask himself concerning his waste. After doing so, the per-~~

son should be able to determine if the solid waste he handles is a hazardous waste:

Hazardous Waste Regulations

If this is the case, the person should look at Figure 3. Figure 3 depicts the special provisions specified in the final Section 261 rules for hazardous waste which:

1. Is generated by a small quantity generator
2. Is or is intended to be legitimately and beneficially used, re-used, recycled, or reclaimed
3. Is a sludge; is listed in Section 261, Subsection D; or is a mixture containing a waste listed in Section 261, Subsection D.

For each of these Groups, Figure 3 indicates with which Subtitle C regulations (if any) the person handling these wastes must comply. Figure 3 also explains that, if a person handles hazardous waste which is not included in any one of the above three categories, his waste is subject to the Subtitle C regulations diagrammed in Figure 4.

Figure 4 is a flowchart which identifies the three categories of activities regulated under the Subtitle C rules, and the corresponding set of rules with which people in each of these categories must comply. It points out that all people who handle hazardous waste are either: (1) Generators of hazardous waste, (2) transporters of hazardous waste, (3) owners or operators of hazardous waste treatment, storage, or disposal facilities, or (4) a combination of the above. Figure 4 indicates that all of these people must notify the Department of their hazardous waste activities in accordance with the Section 3010 Notification Procedures (see 45 FR 12746 et seq.), and obtain an EPA identification number.

It should be noted that people handling wastes listed in Subsection D of Section 261 who have filed, or who intend to file an application to exempt their waste from regulation under the Subtitle C rules, must also comply with the notification requirements of RCRA section 3010.

If a person generates hazardous waste, Figure 4 indicates that he must comply with the Section 262 rules. If he transports it, he must comply with the Section 263 rules. The standards in both these sections are designed to ensure, among other things, proper recordkeeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to a permitted treatment, storage, or disposal facility.

If a person owns or operates a facility which treats, stores, or disposes of hazardous waste, the standards with which he must comply depend on a number of factors. First of all, if the owner or operator of a storage facility is also the person who generates the waste, and the waste is stored at the facility for less than 90 days for subsequent shipment off-site, then the person must comply with § 262.34 of the Section 262 rules.

All other owners or operators of treatment, storage, or disposal facilities must comply with either the Section 264 or the Section 265 rules. To determine with which of these sets of rules an owner or operator must comply, he must find out whether his facility qualifies for interim status. To qualify, the owner or operator must: (1) Have been treating, storing, or disposing of the hazardous waste, or commenced facility construction on or before October 21, 1976, (2) comply with the section 3010 notification requirements, and (3) apply for a permit under Section 270 of this regulation.

If the owner or operator has done all of the above, he qualifies for interim status, and he must comply with the Section 265 rules. These rules contain administrative requirements, monitoring and closure standards, and an abbreviated set of technical and closure and post-closure cost estimate requirements. The owner or operator must comply with these standards until final administrative disposition of his permit application is made. If a permit is issued to the owner or operator, he must then comply with the permit which will be based on the Section 264 rules.

If the owner or operator has not carried out the above three requirements, he does not qualify for interim status. Until he is issued a permit for his facility, the owner or operator must stop waste management operations (if any) at the facility, and send his hazardous waste (if any) to a facility whose owner or operator has interim status or to a storage facility following the Section 262 rules.

In order to apply for a permit, the owner or operator must comply with the procedures specified in Section 270 of this regulation.

It should be noted that the Department will be periodically revising the rules depicted in Figures 3 and 4. All persons are encouraged to call or write to the Department to verify that the regulations which they are reading are

up-to-date. To obtain this verification, contact: Hazardous Waste Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317; (501) 682-0876.

SECTION 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4. Amend **Section 261.1(c)(10)** by removing the citation “§ 261.4(a)(13)” and adding in its place the citation “§ 261.4(a)(14)”.

§ 261.1 Purpose and Scope

* * * * *

(c) * * *

(10) “Processed scrap metal” is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13)(14)).

* * * * *

5. Amend **Section 261.2(c), Table 1**, by removing the entry for “Scrap metal other than excluded scrap metal (see § 261.1(c)(9))” and adding in its place the entry “Scrap metal that is not excluded under § 261.4(a)(13)” to read as follows:

§ 261.2 Definition of Solid Waste

* * * * *

(c) * * *

Table 1

| | Use constituting disposal §261.2(c)(1) (1) | Energy recovery/fuel §261.2(c)(2) (2) | Reclamation §261.2(c)(3) (3) | Speculative Accumulation § 261.2(c)(4) (4) |
|--|--|---|------------------------------------|--|
| Spent Materials | X | X | X | X |
| Sludges (listed in § 261.31 or § 261.32) | X | X | X | X |
| Sludges exhibiting a characteristic of | X | X | -- | X |

| | | | | |
|--|--------------|--------------|--------------|------------------|
| hazardous waste | | | | |
| By-products (listed in § 261.31 or § 261.32) | X | X | X | X |
| By-products exhibiting a characteristic of hazardous waste | X | X | -- | X |
| Commercial chemical products listed in § 261.33 | X | X | -- | -- |
| Scrap metal other than excluded scrap metal (see § 261.1(c)(9)) | X | X | X | --- X |
| <u>Scrap metal that is not excluded under § 261.4(a)(13)</u> | <u>X</u> | <u>X</u> | <u>X</u> | <u>---</u> X |

Note: The terms "spent materials", "sludges", "by-product", "scrap metal", and "processed scrap metal" are defined in § 261.1.

6. Amend **Section 261.4**, paragraph (a)(17)(vi) by removing the citation "(a)(7)" and adding in its place the citation "(b)(7)".

§ 261.4 Exclusions.

- (a) * * *
- (vi) For purposes of paragraph ~~(a)~~**(b)**(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.
- * * * * *

7. Amend **Section 261.5** as follows:
- By revising paragraph (b).
 - By revising paragraph (e).
 - By revising paragraph (f) introductory text.
 - By revising paragraph (f)(2).
 - By revising paragraph (g) introductory text.
 - By revising paragraph (g)(2).

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under ~~sections 262 through 266, 268, and section 270~~ **Sections 262 through 268 and 270 of this Regulation** and 40 CFR Part 124, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section, and § Section 262.35.

* * * * *

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under ~~sections 262 through 266, 268, and section 270~~ **Sections 262 through 268, and 270 of this Regulation**, and 40 CFR Part 124, and the notification requirements of section 3010 of RCRA:

- A total of one kilogram of acute hazardous wastes listed in §§ 261.31, ~~261.32~~ or 261.33(e).
- A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, ~~261.32~~ or 261.33(e).

Note to paragraph (e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or ~~(e)~~**(2)** of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

- The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under ~~sections 262 through 266, 268, and section 270~~ **Sections 262 through 268, and 270 of this Regulation**, and 40 CFR Part 124, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of ~~less than 100 kilograms~~ **100 kilograms or less** of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

- The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Section 262 applicable to generators of ~~less than 1000 kg~~ **greater than 100 kg and less than 1000 kg** of hazardous waste in a calendar month as well as the requirements of ~~sections 262 through 266, 268, and section 270~~ **Sections 263 through 268, and 270 of this Regulation** and 40 CFR Part 124, and the applicable

notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

8. Amend **Section 261.6** as follows:
- a. By revising paragraph (a)(2) introductory text.
 - b. By revising paragraph (a)(2)(ii).
 - c. By revising paragraph (a)(3) introductory text.
 - d. By revising paragraph (c)(1).
 - e. By revising paragraph (d).

The revisions read as follows:

§ 261.6 Requirements for recyclable materials.

(a) ***

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subsections C through ~~H~~ N of Section 266 of this Regulation and all applicable provisions in Sections ~~268 and~~ 270 of this Regulation, and 40 CFR Part 124.

(ii) Hazardous wastes burned ~~for energy recovery~~ (as defined in § 266.100(a)) in boilers and industrial furnaces that are not regulated under Subsection O of Section 264 or 265 of this Regulation (Section 266, Subsection H);

(3) The following recyclable materials are not subject to regulation under ~~sections 262 through 266, 268, and section 270~~ Section 262 through Sections 268 and 270 of this Regulation, or 40 CFR Part 124, and are not subject to the notification requirements of section 3010 of RCRA:

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subsections A through L, AA, BB, and CC of Sections 264 and 265 of this regulation, and under sections 266, ~~267~~, 268, and 270 of this regulation and 40 CFR Part 124 and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of Section 264, 265 or 267 of this regulation.

9. Amend **Section 261.7** as follows:

- a. By revising paragraph (a).
- b. By revising paragraph (b)(1) introductory text.
- c. By revising paragraph (b)(3) introductory text.

The revisions read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under Sections 261 through 268 and 270 of this regulation, or 40 CFR Part 124 or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under sections 261 through 268 and 270 of this Regulation, and 40 CFR 124 and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31 ~~261.32~~, or 261.33(e) of this regulation is empty if:

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31, ~~261.32~~, or 261.33(e) is empty if:

10. Amend **Section 261.23** by revising paragraph (a)(8) to read as follows:

§ 261.23 Characteristic of reactivity.

(a) ***

(8) It is a forbidden explosive as defined in ~~49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88~~ 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

11. Amend **Section 261.30** by revising paragraphs (c) and (d) to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under Sections 262 through 265, 267, 268, and 270 of this regulation.

(d) The following hazardous wastes listed in § 261.31 ~~or § 261.32~~ are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

12. In **Section 261.31(a)**, the table is amended by revising the entry for F037 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under §§ 260.20 and 260.22 and listed in Appendix IX.

* * * * *

F037 -- Petroleum refinery primary oil/water/solids separation sludge --

Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and ~~oil~~ **oily** cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of. (T)

* * * * *

13. In **Section 261.32(a)**, the table is amended as follows:

- a. Under the heading "organic chemicals", revise the entry for "K107".
- b. Remove the heading "Primary copper:".
- c. Remove the heading "Primary lead:".
- d. Remove the heading "Primary zinc:".
- e. Remove the heading "Ferroalloys:".

The revision reads as follows:

§ 261.32 Hazardous wastes from specific sources

(a) * * *
* * * * *

K107 -- Column bottoms from product separation from the production of 1,1 dimethylhydrazine (UDMH) from carboxylic acid ~~hydrazines~~ **hydrazides**. (C,T)

* * * * *

14. In **Section 261.33(f)**, the table is amended by revising the entry for U239 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *
(f) * * *

U239 1330-20-7 Benzene, dimethyl- (I,~~T~~)

Appendix VII [Amended]

15. **Section 261, Appendix VII** is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. "K064," "K065," "K066," "K090," and "K091".

16. **Section 261, Appendix XI** is amended by adding a delisting decision for Tokusen Inc., to the end of the table, to read as follows:

Table 1—Waste Excluded From Non-Specific Sources

| Facility | Address | Waste description |
|----------|---------|-------------------|
|----------|---------|-------------------|

* * * * *

**Tokusen, USA Inc
Conway, AR**

Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 2,000 cubic yards per calendar year after [Insert date of Commission adoption of this revision] to be disposed of in a Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a verification testing program that meets the following paragraphs:

(1) Delisting Levels: All leachable concentrations for those constituents must not exceed the following levels (mg/L for TCLP).

(A) Inorganic Constituents: Antimony - 0.4; Arsenic - 1.59; Barium - 100; Chromium - 5.0; Cobalt - 0.8; Copper - 91.3; Lead - 2.32; Nickel - 50.5; Selenium - 1.0; Zinc - 748.

(B) Organic Constituents: Acetone - 1950.

(2) Waste Management:

(A) Tokusen must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied and approval is received by EPA.

(B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. Tokusen can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations.

(C) If constituent levels in a sample exceed any of the

Delisting Levels set in paragraph (1), Tokusen can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Tokusen must, from that point forward, treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). Tokusen must manage and dispose of the waste generated under Subtitle C of RCRA when it becomes aware of any exceedance.

(D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Tokusen may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent verification testing indicates an exceedance of the Delisting Levels in paragraph (1), Tokusen must manage the WWTP sludge as a hazardous waste after it has received approval from EPA as described in paragraph (2)(C).

(3) Verification Testing Requirements: Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in Section 260.11 of this Regulation must be used without substitution. As applicable, the SW-846 methods might include Methods 8260B, 1311/8260B, 8270C, 6010B, 7470, 9034A, ASTM D-4982B, ASTM D-5049, E413.2. Methods must meet Performance Based Measurement System Criteria in which The Data Quality Objectives are to demonstrate that representative samples of sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). Tokusen must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B).

(A) Initial Verification Testing: After EPA grants the final exclusion, Tokusen must do the following:

(i) The first sampling event for eight (8) samples will be performed within thirty (30) days of operation after this exclusion becomes final.

(ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1).

(iii) Within sixty (60) days after this exclusion becomes final, Tokusen will report initial verification analytical test data for the WWTP sludge, including analytical quality control information. Tokusen must request in writing that EPA allows Tokusen to substitute the Testing conditions in (3)(B) for (3)(A).

(B) Subsequent Verification Testing: Following written notification by EPA, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. If levels of constituents measured in the samples of the WWTP sludge do not exceed the levels set forth in paragraph (1) in two consecutive quarters, Tokusen can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. After the first year of sampling events, one (1) verification sampling test can be performed on two (2) annual samples of the waste treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1).

(C) Termination of Testing:

(i) After the first year of quarterly testings, if the

Delisting Levels in paragraph (1) are met, Tokusen may then request that EPA does not require a quarterly testing.

(ii) Following termination of the quarterly testing, Tokusen must conduct one (1) sampling event on two (2) representative samples for all constituents listed in paragraph (1) annually.

(4) Changes in Operating Conditions: If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA and ADEQ in writing; it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA and ADEQ.

(5) Data Submittals: Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in paragraph (6). Tokusen must:

(A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-C) within the time specified.

(B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.

(C) Furnish these records and data when EPA or the State of Arkansas requests them for inspection.

(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I can not personally verify its (their) truth and accuracy I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(6) Re-Opener:

(A) If, any time after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director and ADEQ within 10 days of first possessing or being made aware of that

data.

(B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), Tokusen must report the data in writing to the Division Director within 10 days of first possessing or being made aware of that data.

(C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.

(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if) no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.

(7) Notification Requirements: Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.

(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.

(B) Update one-time written notification, if it ships the delisted waste into a different disposal facility.

(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

* * * * *

SECTION 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

17. Amend **Section 262.10** by revising paragraphs (d) and (f) as follows:

§ 262.10 Purpose, scope and applicability.

* * * * *

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in § 262.58(a)(1) of this regulation for recovery must comply with subsection H of this section. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 (§ 261.3 of this regulation) and is subject to either the Federal RCRA manifesting requirements at 40 CFR Part 262, subpart B, the universal waste management standards of 40 CFR part 273, Section 273 of this regulation, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or Section 266, Subsection G of this regulation.

* * * * *

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 of this regulation is not required to comply with other standards in this Section or sections 270, 264, 265, **267**, or 268 with respect to such pesticides.

* * * * *

18. Amend **Section 262.11** by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to Sections 261, 264, 265, 266, **267**, 268, and 273 of this regulation for possible exclusions or restrictions pertaining to management of the specific waste.

19. Amend **Section 262.23** by adding paragraph (f) to read as follows:

§ 262.23 Use of the manifest.

* * * * *

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of §§ 264.72(f) or 265.72(f) of this regulation, the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment;
or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected

shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

20. Amend **Section 262.34** as follows:

- a. By revising paragraph (a)(4).
- b. By revising paragraph (b).
- c. By revising paragraph (c)(1) introductory text.
- d. By revising paragraph (c)(2).
- e. By revising paragraph (d)(4).
- f. By revising paragraph (f).
- g. By revising paragraph (i).

The revisions and addition read as follows:

§ 262.34 Accumulation time.

* * * * *

(a)

(4) The generator complies with the requirements for owners or operators in subparts C and D in section 265, with § 265.16, and with ~~268.7(a)(5)~~ all applicable requirements under Section 268.

* * * * *

(b) ~~A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of §§ 264 and 265 and the permit requirements of § 270 unless he has been granted an extension to the 90-day period. A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Sections 264, 265, and 267 of this regulation and the permit requirements of Section 270 unless they have been granted an extension to the 90-day period.~~ Such extension may be granted by ADEQ if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

* * * * *

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in §§ 261.31

or 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this regulation. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subsection C of Section 265 of this regulation, ~~the requirements of §268.7(a)(5);~~ with all applicable requirements under Section 268; and

* * * * *

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Sections 264, 265 and 267, and the permit requirements of Section 270 of this regulation unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by ADEQ if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Director on a case-by-case basis.

* * * * *

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of Sections 264, 265 and 267, and the permit requirements of Section 270 of this regulation unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by ADEQ if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Director on a case-by-case basis.

* * * * *

21. Amend **Section 262.42** as follows:
- a. By revising paragraph (a)(1).
 - b. By revising paragraph (a)(2) introductory text.
 - c. By adding paragraph (c).
- The revisions and addition read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of ~~greater than~~ 1000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31, or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of ~~greater than~~ 1000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31, or § 261.33(e) in a calendar month, must submit an Exception Report to the Director if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

- (i) A legible copy of the manifest for which the generator does not have confirmation of delivery;
- (ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of Section 264.72(e)(1) through (6) or Section 265.72(e)(1) through (6) of this regulation), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial

transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

22. **Section 262.55** is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report ~~with the Regional Administrator with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460,~~ if any of the following occurs:

* * * * *

23. **Section 262.58** is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this subsection for purposes of recovery is subject to subsection H of this section. The requirements of subsections E and F of this section do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, Section 273 of this regulation, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or Section 266, Subsection G of this regulation.

(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of subpart H of this part, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any

purpose) remains subject to the requirements of subsections E and F of this section, **and is not subject to the requirements of subsection H of this section.**

24. Amend **Section 262.60(b)** introductory text by removing the citation “§ 262.20(a)” and adding in its place “§ 262.20”.

25. **Section 262 Subsection H** is revised to read as follows:

Subsection H—Trans-boundary Movements of Hazardous Waste for Recovery Within the OECD

§ 262.80 Applicability.

~~(a) The requirements of this subsection apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the Federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the Federal manifesting requirements at 40 CFR Part 262, Subpart B, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.~~

(a) The requirements of this subsection apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subsection B, the universal waste management standards of 40 CFR part 273, Section 273 of this regulation, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or Section 266, subsection G of this regulation.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any **notifier exporter** duties, if applicable, under this subsection.

§ 262.81 Definitions.

The following definitions apply to this subsection.

(a) “Competent **authorities authority**” means the regulatory authority or authorities of concerned countries having jurisdiction over **transfrontier trans-boundary** movements of wastes destined for recovery operations.

(b) **“Concerned countries”** ~~Countries concerned~~ means the **exporting and importing** OECD member countries **of export or import** and any OECD member countries of transit.

(c) **“Consignee”** ~~means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country:~~

“Country of export” ~~means any designated OECD member country listed in § 262.58(a)(1) from which a trans-boundary movement of hazardous wastes is planned to be initiated or is initiated.~~

“Country of import” ~~means any designated OECD member country listed in § 262.58(a)(1) to which a trans-boundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.~~

(d) “Country of transit” means any designated OECD member country listed in § 262.58(a)(1) and (a)(2) other than the **exporting or importing** country **of export or country of import** across which a **transfrontier trans-boundary** movement of **hazardous** wastes is planned or takes place.

(e) **“Exporting country”** ~~means any designated OECD member country in § 262.58(a)(1) from which a transfrontier movement of wastes is planned or has commenced:~~

(f) **“Importing country”** ~~means any designated OECD country in § 262.58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein:~~

(g) **“Notifier” “Exporter”** means the person under the jurisdiction of the **exporting** country **of export** who has, or will have at the time the planned **transfrontier trans-boundary** movement commences, possession or other forms of legal control of the wastes and who proposes **their transfrontier trans-boundary** movement **of the hazardous wastes** for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the **exporting** country **of export**, **notifier “exporter”** is interpreted to mean a person domiciled in the United States.

“Importer” ~~means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.~~

“OECD” ~~means the Organization for Economic Cooperation and Development.~~

(h) “OECD area” means all land or marine areas under the national jurisdiction of any **designated** OECD member country listed in § 262.58. When the regulations refer to shipments to or from an OECD **member** country, this means “OECD area.”

(i) “Recognized trader” means a person who, with appropriate authorization of **concerned** countries **concerned**,

acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate ~~transfrontier~~ **trans-boundary** movements of wastes destined for recovery operations.

(j) “Recovery facility” means a facility which, under applicable domestic law, is operating or is authorized to operate in the **importing** country **of import** to receive wastes and to perform recovery operations on them.

(k) “Recovery operations” means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, ~~as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F-94-IEHF-FFFFF) and the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France)~~ which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1–R10.

R12 Exchange of wastes for submission to any of the operations numbered R1–R11.

R13 Accumulation of material intended for any operation ~~in Table 2.B~~ **numbered R1–R12.**

(l) “~~Transfrontier~~ **Trans-boundary** movement” means any movement of wastes from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

§ 262.82 General conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as

defined in § 262.80(a). The OECD Green and Amber lists are incorporated by reference in § 262.89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subsection.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subsection.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD member country listed in § 262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a), but are considered hazardous by an OECD member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD member country that considers the waste hazardous unless the parties make other arrangements through contracts.¹

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one

or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.²

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.³

(4) Wastes not yet assigned to an OECD waste list are eligible for trans-boundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Green control procedures.

(b) General conditions applicable to trans-boundary movements of hazardous waste: (1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The trans-boundary movement must be in compliance with applicable international transport agreements; and⁴

(3) Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country: (1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in § 262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial

country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The trans-boundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) Duty to return or re-export waste subject to the Amber control procedures. When a trans-boundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or reexported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be reexported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the

waste or such other period of time as the concerned member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(e) Duty to return wastes subject to the Amber control procedures from a country of transit. When a trans-boundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(f) Requirements for wastes destined for and received by R12 and R13 facilities. The trans-boundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty

(30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by mail, email without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the trans-boundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the trans-boundary movement.

(g) Laboratory analysis exemption The trans-boundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

§ 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD ~~importing and exporting~~ countries **of import and transit** prior to exporting hazardous waste destined for recovery operations subject to this Subsection. Hazardous wastes subject to the ~~amber-list~~

controls **Amber control procedures** are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.

~~(b) Amber-list wastes. The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the amber list is prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met:~~

~~(1) Transactions requiring specific consent:~~

~~(i) Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (c) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year:~~

~~(ii) Tacit consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to paragraph (b)(1)(i) of this section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30 day period; renotification and renewal of all consents is required for exports after that date:~~

~~(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date:~~

~~(2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:~~

~~(i) The notifier must provide EPA the information identified in paragraph (c) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "OECD Export Notification--Pre-approved Facility" prominently displayed on the envelope:~~

~~(ii) Shipments may commence after the notification required in paragraph (b)(1)(i) of this section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.~~

(b) Amber wastes. Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) Notification. At least forty-five (45) days prior to commencement of each trans-boundary movement, the exporter must provide written notification in English of the proposed trans-boundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to

export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) Tacit consent. If no objection has been lodged by any countries concerned (i.e., exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the trans-boundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the trans-boundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Trans-boundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) Notification. The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a preapproved facility. The notification must indicate that the recovery facility is preapproved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently

displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

~~(e) Red-list wastes. The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the red list is prohibited unless notice is given pursuant to paragraph (b)(1)(i) of this section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.~~

(c) Wastes not covered in the OECD Green and Amber lists. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in § 262.89(d), but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in § 262.89(d), and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

~~(d) Unlisted wastes. Wastes not assigned to the green, amber, or red list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with paragraph (c) of this section. Unlisted wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are not subject to amber or red controls when exported or imported.~~

(d) Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section: (1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and email address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name (if not the owner or operator

of the recovery facility), address, telephone, fax numbers, and email address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of trans-boundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in § 262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in § 262.81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the trans-boundary movement.

Name: _____ Signature: _____ Date: _____

Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

~~(e) Notification information. Notifications submitted under this section must include:~~

~~(1) Serial number or other accepted identifier of the notification form;~~

~~(2) Notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;~~

~~(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;~~

~~(4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the~~

~~waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;~~

~~(5) Intended transporters and/or their agents;~~

~~(6) Country of export and relevant competent authority, and point of departure;~~

~~(7) Countries of transit and relevant competent authorities and points of entry and departure;~~

~~(8) Country of import and relevant competent authority, and point of entry;~~

~~(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;~~

~~(10) Date foreseen for commencement of transfrontier movement;~~

~~(11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and~~

~~(12) Certification/Declaration signed by the notifier that states:~~

~~I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement.~~

~~Name: _____~~

~~Signature: _____~~

~~Date: _____~~

~~Note to paragraph (e)(12): The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.~~

(e) Certificate of Recovery. As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under § 262.85.

§ 262.84 Tracking Movement document.

(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a **tracking movement** document meeting the conditions of **§ 262.84(b) paragraph (b) of this section** accompanies each **transfrontier trans-boundary** movement of wastes subject to the **amber-list or red-list Amber control procedures** from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or **sorted exchanged** by the **consignee importer** prior to shipment to the final recovery

facility, except as provided in ~~§ 262.84~~ **paragraphs (a)(1) and (2) of this section.**

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the **tracking movement** document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at § 262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the **tracking movement** document with the manifest (in accordance with the routing procedures for the manifest in § 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The **tracking movement** document must include all information required under § 262.83 (for notification), as well as the following **paragraphs (b)(1) through (b)(7) of this section:**

- (1) Date movement commenced;
- (2) Name (if not **notifier exporter**), address, telephone, fax numbers, and e-mail of primary exporter;
- (3) Company name and EPA ID number of all transporters;
- (4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;
- (5) Any special precautions to be taken by transporter(s);
- (6) Certification/declaration signed by the **notifier exporter** that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the trans-boundary movement, and that:

1. All necessary consents have been received; OR
2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR
3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

(Delete sentences that are not applicable)

Name: _____

Signature: _____

Date: _____

(7) Appropriate signatures for each custody transfer (e.g., transporter, **consignee importer**, and owner or operator of the recovery facility).

(c) **Notifiers Exporters** also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and **consignees importers** must comply with the

import subsection F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the **tracking movement** document (e.g., transporter, **consignee importer**, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subsection, the owner or operator of the U.S. recovery facility must send signed copies of the **tracking movement** document to the **notifier exporter**, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. **If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under § 262.81, the facility shall retain the original of the movement document for three (3) years.**

§ 262.85 Contracts.

(a) ~~Transfrontier movements of hazardous wastes subject to amber or red control procedures~~ **Trans-boundary movements of hazardous wastes subject to the Amber control procedures** are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the **notifier exporter** and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of **paragraph (b)(1) through (b)(4) of this section:**

- (1) The generator of each type of waste;
- (2) Each person who will have physical custody of the wastes;
- (3) Each person who will have legal control of the wastes; and
- (4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

- (1) The person having actual possession or physical control over the wastes will immediately inform the **notifier exporter** and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit,

the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes **and, as the case may be, shall provide the notification for re-export.**

(d) Contracts must specify that the **consignee importer** will provide the notification required in § 262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subsection.

(g) Upon request by EPA, U.S. **notifiers exporters, consignees importers**, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as **a notifier or consignee an exporter or importer** for **transfrontier trans-boundary** shipments of waste must comply with all the requirements of this subsection associated with being **a notifier or consignee an exporter or importer**.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this subsection, persons (e.g., **notifiers exporters**, recognized traders) who meet the definition of primary exporter in § 262.51 **or who initiate the movement documentation under § 262.84** shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter **or the person who initiates the movement document under § 262.84** is required to file an annual report for waste exports that are not covered under this subsection, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include **all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:**

(1) The EPA identification number, name, and mailing and site address of the **notifier exporter** filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list **incorporated by reference in § 262.89(d)**, DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subsection, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter **or initiator of the movement**

document under § 262.84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 must file an exception report in lieu of the requirements of § 262.42 (if applicable) with the ~~Administrator~~ Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the tracking documentation RCRA hazardous waste manifest (if applicable) signed by the transporter stating identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter notifier has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 or who initiate the movement document under § 262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, tracking movement document) sent by the recovery facility to the exporter notifier for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in this

section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.88 Pre-approval for U.S. recovery facilities [Reserved].

§ 262.89 OECD waste lists.

(a) *General.* For the purposes of this subsection, a waste is considered hazardous under U.S. national procedures, and hence subject to this subsection, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subsection G.

(b) If a waste is hazardous under paragraph (a) of this section and it appears on the amber or red list, it is subject to amber or red list requirements respectively the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in § 262.81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.

(d) The OECD waste lists, as set forth in Annex B (“Green List”) and Annex C (“Amber List”) (collectively “OECD waste lists”) of the 2009 “Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Trans-boundary Movements of Wastes Destined for Recovery Operations,” are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre’ Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal->

[register/cfr/ibr-locations.html](#). To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

¹ **Note to Paragraph (a)(2):** Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subsection. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subsection.

² **Note to Paragraph (a)(3)(i):** The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

³ **Note to Paragraph (a)(3)(ii):** The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

⁴ **Note to Paragraph (b)(2):** These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

SECTION 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

26. Section 263.10(d) is amended by revising paragraph (d) to read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR part 262, or subject to the waste management standards of 40 CFR part 273, or subject to Section 273 of this Regulation, that is being imported from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to this Subsection and to all other relevant requirements of subsection H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for **tracking movement** documents.

* * * * *

27. Revise Section 263.12 to read as follows:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is

not subject to regulation under Sections 264, 265, [267](#), 268, and 270 of this regulation with respect to the storage of those wastes.

SECTION 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

28. Amend Section 264.52(b) in the first sentence by removing the words “, or part 1510 of chapter V”.

29. Amend Section 264.56(d)(2) introductory text by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title)”.

30. Section 264.12 is amended by revising paragraph (a)(2) to read as follows:

§ 264.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the **tracking movement** document bearing all required signatures to the **foreign exporter notifier**; to the Office of Enforcement and Compliance Assurance, Office of **Compliance, Enforcement Planning, Targeting and Data Division (2222A) Federal Activities, International Compliance Assurance Division (2254A)**, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. **In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA’s Office of Enforcement and**

Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

31. Section 264.52(b) is amended by removing the words, "or Part 1510 of chapter V..."

§ 264.52 Content of contingency plan.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, ~~or part 1510 of Chapter V, CFR,~~ or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Section.

32. Section 264.56(d)(2) is amended by removing the parenthetical phrase in the first sentence ad follos:

§ 264.56 Emergency procedures.

(d) ***

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, ~~(in the applicable regional contingency plan under 40 CFR Part 1510)~~ or the National Response Center (using their 24-hour toll free number, 1-800-424-8802). The report must include:

33. Section 264.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) ***

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: ~~International Compliance Assurance Division,)FA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building~~ Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subsection H, the owner or operator of a facility must provide a copy of the tracking movement document bearing all required signatures to the ~~notifier exporter,~~ to the ~~International Compliance Assurance Division,)FA/OECA (2254A), U.S. Environmental Protection Agency, 401 M Street, SW~~ Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking movement document must be maintained at the facility for at least three (3) years from the date of signature.

34. Amend Section 264.72 as follows:

- a. By revising paragraph (e)(6).
- b. By revising paragraph (f)(1).
- c. By revising paragraph (f)(7).
- d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 264.72 Manifest discrepancies.

(e) ***

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(f) ***

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the ~~generator's~~ facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the ~~generator's~~ facility's site address, then write the ~~generator's~~ facility's site address in the designated space for Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2),

(3), (4), (5), (6), and (8) of this subsection.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a) of this regulation.

* * * * *

35. In **Section 264.314**, amend paragraph (d) introductory text by revising “(e)(1)” to read “(d)(1)” and by revising “(e)(2)” to read “(d)(2)”.

36. In **Section 264.316**, amend paragraph (b) by removing the citation “§ 264.314(e)” and adding in its place “§ 264.314(d)”.

37. Amend **Section 264.552** as follows:

a. In paragraph (a)(3)(ii), remove the citation “§ 264.314(d)” and add in its place “§ 264.314(c)”;

b. In paragraph (a)(3)(iii), remove the citation “§ 264.314(f)” and add in its place “§ 264.314(e)”;

c. In paragraph (a)(3)(iv), remove the citation “§ 264.314(c)” and add in its place “§ 264.314(b)” and remove the citation “§ 264.314(e)” and add in its place “§ 264.314(d)”;

d. In paragraph (e)(4)(iv)(F), remove the citation “260.11(a)(11)” and add in its place “§ 260.11(c)(3)(v)”.

38. **Section 264.1062** is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.

(a)(+) An owner or operator subject to the requirements of § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

~~(2) An owner or operator must notify the Director before implementing one of the alternative work practices:~~

* * * * *

SECTION 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE,

AND DISPOSAL FACILITIES

39. **Section 265.12** is amended by revising paragraph (a)(2) to read as follows:

§ 265.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the **notifier foreign exporter**; to the Office of Enforcement and Compliance Assurance, ~~Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460~~ **Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460**; and to the competent authorities of all other **concerned** countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. **In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA’s Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.**

* * * * *

40. Amend paragraph **Section 265.52(b)** in the first sentence by removing the words “or part 1510 of chapter V”.

41. Amend **Section 265.56(d)(2)** by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title)”.

42. **Section 265.71** is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest ~~to the following address within 30 days of delivery:~~ and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the ~~movement tracking document~~ bearing all required signatures to the ~~notifier exporter,~~ to the Office of Enforcement and Compliance Assurance, ~~Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460,~~ Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other ~~concerned~~ countries concerned. The original copy of the ~~movement tracking~~ document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

43. Amend **Section 265.72** as follows:

- a. By revising paragraph (e)(6).
- b. By revising paragraph (f)(1).
- c. By revising paragraph (f)(7).
- d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offerrer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the ~~generator's facility's~~ U.S. EPA ID number in Item 1 of the new manifest. Write the ~~generator's facility's~~ name and mailing address in Item 5 of the new manifest. If the mailing address is different from the ~~generator's facility's~~ site address,

then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this subsection.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

44. In **Section 265.314**, amend paragraph (e) introductory text by removing the citation "(f)(1)" and adding in its place "(e)(1)" and by removing the citation "(f)(2)" and adding in its place "(e)(2)".

45. In **Section 265.316**, amend paragraph (b) by removing the citation "\$ 265.314(f)" and adding in its place "\$ 265.314(e)".

SECTION 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

46. Revise **Section 266.22** to read as follows:

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subsections A through L of Sections 264, 265, 267, and 270 of this regulation and 40 CFR 124 and the notification requirement under section 3010 of RCRA.

47. Amend **Section 266.70** by revising paragraph (d) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(d) Recyclable materials that are regulated under this subsection that are accumulated speculatively (as defined in § 261.1(c) of this regulation) are subject to all applicable provisions of Sections 262 through 265, 267, and 270 of this regulation, and 40 CFR 124.

48. In **Section 266.80(a)** the existing table is revised, to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

| If your batteries . . . | And if you . . . | Then you . . . | And you . . . |
|--|--|--|---|
| (1) Will be reclaimed through regeneration (such as by electrolyte replacement). | | ... are exempt from §§ 262 (except for § 262.11), 263, 264, 265, 266, 268, and 270 of this regulation, and the notification requirements at § 3010 of RCRA. | ... are subject to § 261 and § 262.11 of this regulation. |
| (2) Will be reclaimed other than through regeneration. | generate, collect, and/or transport these batteries. | ... are exempt from Sections 262 (except for § 262.11), 263, 264, 265, 266, and 270 of this regulation, and the notification requirements at § 3010 of RCRA. | ... are subject to § 261 and § 262.11, and applicable provisions under § 268. |
| <u>(3) Will be reclaimed other than through regeneration.</u> | store these batteries but you aren't the reclaimer. | ... are exempt from §§ 262 (except for § 262.11), 263, 264, 265, 266, and 270 of this regulation, and the notification requirements at § 3010 of RCRA. | ... are subject to § 261 and § 262.11, and applicable provisions under § 268. |
| (4) Will be reclaimed other than through regeneration. | store these batteries before you reclaim them. | ... must comply with § 266.80(b) and as appropriate other regulatory provisions described in § 266.80(b). | ... are subject to § 261, § 262.11, and applicable provisions under § 268. |
| (5) Will be reclaimed other than through regeneration. | don't store these batteries before you reclaim them. | ... are exempt from §§ 262 (except for § 262.11), 263, 264, 265, 266, and 270 of this regulation, and the notification requirements at § 3010 of RCRA. | ... are subject to § 261, § 262.11, and applicable provisions under § 268. |

| | | | |
|---|--|--|--|
| <p><u>(6) Will be reclaimed through regeneration or any other means.</u></p> | <p><u>export these batteries for reclamation in a foreign country.</u></p> | <p><u>... are exempt from §§ 263, 264, 265, 266, 268, and 270 of this regulation, and the notification requirements at § 3010 of RCRA. You are also exempt from § 262, except for 262.11, and except for the applicable requirements in either: (1) § 262 subsection H; or (2) 262.53 "Notification of Intent to Export," 262.56(a)(1) through (4)(6) and (b) "Annual Reports," and 262.57 "Record-keeping".</u></p> | <p><u>... are subject to § 261 and § 262.11, and either must comply with § 262, subsection H (if shipping to one of the OECD countries specified in § 262.58(a)(1)), or must:</u></p> <p><u>(a) Comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57; and</u></p> <p><u>(b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subsection E of § 262 of this regulation; and</u></p> <p><u>(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.</u></p> |
| <p><u>(7) Will be reclaimed through re-generation or any other means.</u></p> | <p><u>Transport these batteries in the U.S. to export them for reclamation in a foreign country.</u></p> | <p><u>... are exempt from §§ 263, 264, 265, 266, 268, and 270 of this regulation, and the notification requirements at § 3010 of RCRA.</u></p> | <p><u>... must comply with applicable requirements in § 262, subsection H (if shipping to one of the OECD countries specified in § 262.58(a)(1)), or must comply with the following:</u></p> <p><u>(a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent;</u></p> <p><u>(b) you must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and</u></p> <p><u>(c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.</u></p> |

49. Amend **Section 266.80** by adding paragraphs (b)(1)(viii) and (b)(2)(viii) to read as follows:

§ 266.80 Applicability and requirements.

* * * * *

(b) * * *

(1) * * *

(viii) All applicable provisions in Section 267 of this regulation.

(2) * * *

(viii) All applicable provisions in Section 267 of this regulation.

50. Amend **Section 266.101** by revising paragraph (c) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) Storage and treatment facilities. (1) Owners and

operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of Sections 264, 265, ~~267~~ and 270 of this regulation, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(2) ~~Applicability of Section 264 standards.~~

Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of Sections 264, 265, 267 and 270 of this regulation applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of

[this section.](#)

SECTION 268—LAND DISPOSAL RESTRICTIONS

51. In **Section 268.40(j)**, the table “Treatment Standards for Hazardous Wastes,” is amended as shown on the following pages:

- a. By revising the entry for F025.
- b. By revising the entry for K031.
- c. By revising the entry for K156.
- d. By revising the entry for K157.
- e. By revising the entry for K158.

§268.40 TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable

| WASTE CODE | WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹ | REGULATED HAZARDOUS CONSTITUENT | | WASTEWATERS | NON-WASTEWATERS |
|-----------------------|---|---------------------------------|-------------------------|---|--|
| | | Common Name | CAS ² Number | Concentration ³ in mg/L; or Technology Code ⁴ | Concentration ⁵ in mg/kg unless noted as "mg/L TCLP"; or Technology Code ⁴ |
| F025 | Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory | Carbon tetrachloride | 56-23-5 | 0.057 | 6.0 |
| | | Chloroform | 67-66-3 | 0.046 | 6.0 |
| | | 1,2-Dichloroethane | 107-06-2 | 0.21 | 6.0 |
| | | 1,1-Dichloroethylene | 75-35-4 | 0.025 | 6.0 |
| | | Methylene chloride | 75-9-2 | 0.089 | 30 |
| | | 1,1,2-Trichloroethane | 79-00-5 | 0.054 | 6.0 |
| | | Trichloroethylene | 79-01-6 | 0.054 | 6.0 |
| | | Vinyl chloride | 75-01-4 | <u>0.27</u> | 6.0 |
| | Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory | Carbon tetrachloride | 56-23-5 | 0.057 | 6.0 |
| | | Chloroform | 67-66-3 | 0.046 | 6.0 |
| | | Hexachlorobenzene | 118-74-1 | 0.055 | 10 |
| | | Hexachlorobutadiene | 87-68-3 | 0.055 | 5.6 |
| | | Hexachloroethane | 67-72-1 | 0.055 | 30 |
| | | Methylene chloride | 75-9-2 | 0.089 | 30 |
| 1,1,2-Trichloroethane | | 79-00-5 | 0.054 | 6.0 | |
| Trichloroethylene | | 79-01-6 | 0.054 | 6.0 | |
| Vinyl chloride | 75-01-4 | <u>0.27</u> | 6.0 | | |
| K031 | By-product salts generated in the production of MSMA and cacodylic acid. | Arsenic | 7440-38-2 | <u>1.4</u> | 5.0 mg/L TCLP |

| | | | | | |
|---------------|---|----------------------|------------|-------|------|
| K156 | Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) ¹⁰ | Acetonitrile | 75-05-8 | 5.6 | 1.8 |
| | | Acetophenone | 98-86-2 | 0.010 | 9.7 |
| | | Aniline | 62-53-3 | 0.81 | 14 |
| | | Benomyl | 17804-35-2 | 0.056 | 1.4 |
| | | Benzene | 71-43-2 | 0.14 | 10 |
| | | Carbaryl | 63-25-2 | 0.006 | 0.14 |
| | | Carbenzadim | 10605-21-7 | 0.056 | 1.4 |
| | | Carbofuran | 1563-66-2 | 0.006 | 0.14 |
| | | Carbosulfan | 55285-14-8 | 0.028 | 1.4 |
| | | Chlorobenzene | 108-90-7 | 0.057 | 6.0 |
| | | Chloroform | 67-66-3 | 0.046 | 6.0 |
| | | o-Dichlorobenzene | 95-50-1 | 0.088 | 6.0 |
| | | Methomyl | 16752-77-5 | 0.028 | 0.14 |
| | | Methylene chloride | 75-09-2 | 0.089 | 30 |
| | | Methyl ethyl ketone | 78-93-3 | 0.28 | 36 |
| | | Naphthalene | 91-20-3 | 0.059 | 5.6 |
| | | Phenol | 108-95-2 | 0.039 | 6.2 |
| | | Pyridine | 110-86-1 | 0.014 | 16 |
| Toluene | 108-88-3 | 0.080 | 10 | | |
| Triethylamine | 121-44-8 | 0.081 | 1.5 | | |
| K157 | Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.) ¹⁰ | Carbon tetrachloride | 56-23-5 | 0.057 | 6.0 |
| | | Chloroform | 67-66-3 | 0.046 | 6.0 |
| | | Chloromethane | 74-87-3 | 0.19 | 30 |
| | | Methomyl | 16752-77-5 | 0.028 | 0.14 |
| | | Methylene chloride | 75-09-2 | 0.089 | 30 |

| | | | | | |
|------|--|---------------------|------------|-------|------|
| | | Methyl ethyl ketone | 78-93-3 | 0.28 | 36 |
| | | Pyridine | 110-86-1 | 0.014 | 16 |
| | | Triethylamine | 121-44-8 | 0.081 | 1.5 |
| K158 | Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.</u> ¹⁰ | Benomyl | 17804-35-2 | 0.056 | 1.4 |
| | | Benzene | 71-43-2 | 0.14 | 10 |
| | | Carbenzadim | 10605-21-7 | 0.056 | 1.4 |
| | | Carbofuran | 1563-66-2 | 0.006 | 0.14 |
| | | Carbosulfan | 55285-14-8 | 0.028 | 1.4 |
| | | Chloroform | 67-66-3 | 0.046 | 6.0 |
| | | Methylene chloride | 75-09-2 | 0.089 | 30 |
| | | Phenol | 108-95-2 | 0.039 | 6.2 |

52. In **Section 268.48(a)**, the table “Universal Treatment Standards,” is amended by adding the specific entries, “bis(2-Ethylhexyl)phthalate” and for “Hexachloropropylene” in alphabetical order:

§ 268.48 Universal Treatment Standards.

(a) * * *

§ 268.48 Table UTS – Universal Treatment Standards

TABLE UTS - UNIVERSAL TREATMENT STANDARDS
NOTE: NA means not applicable

| Chemical Name | CAS No ¹ | Waste waters ² | Nonwaste waters ³ |
|-----------------------------------|---------------------|---------------------------|------------------------------|
| Organic Constituents | | | |
| ***** | | | |
| <u>Ethyl ether</u> | <u>60-29-7</u> | <u>0.12</u> | <u>160</u> |
| <u>bis(2-Ethylhexyl)phthalate</u> | <u>117-81-7</u> | <u>0.28</u> | <u>28</u> |
| ***** | | | |
| <u>Hexachloroethane</u> | <u>67-72-1</u> | <u>0.055</u> | <u>30</u> |
| <u>Hexachloropropylene</u> | <u>1888-71-7</u> | <u>0.035</u> | <u>30</u> |
| ***** | | | |

SECTION 270—ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

53. Amend **Section 270.4** as follows:

- a. By redesignating paragraph (a)(1) as paragraph (a)(1)(i).
- b. By redesignating paragraph (a)(2) as paragraph (a)(1)(ii).
- c. By redesignating paragraph (a)(3) as paragraph (a)(1)(iii).

- d. By redesignating paragraph (a)(4) as paragraph (a)(1)(iv).
- e. By redesignating paragraph (a) as introductory text (a)(1).
- f. By adding paragraph (a)(2) to read as follows:

§ 270.4 Effect of a permit.

(a)(1) Compliance with an HWM permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

- (+) (i) Become effective by statute;
- (-) (ii) Are promulgated under Section 268 of this regulation or 40 CFR Part 268 restricting the placement of hazardous wastes in or on the land; or
- (+) (iii) Are promulgated under Section 264 of this regulation regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of § 270.42 Class 1* permit modifications.
- (+) (iv) Are promulgated under Subsections AA, BB, or CC of Section 265 of this Regulation limiting air emissions.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

EXHIBIT B:

**Questionnaire for Filing
Proposed Rules and Regulations
with the
Arkansas Legislative Council
and the
Joint Interim Committee**

QUESTIONNAIRE
FOR FILING PROPOSED RULES AND REGULATIONS WITH THE
ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality
DIVISION Hazardous Waste Division
DIVISION DIRECTOR Clyde Rhodes
CONTACT PERSON Tom Ezell
ADDRESS 5301 Northshore Drive, North Little Rock, AR
72118
PHONE NO: (501) 682-0831 **FAX NO:** (501) 682-0565 **E-MAIL:** rhodes@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING Ryan Benefield, Deputy Director
PRESENTER E-MAIL benefield@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. **What is the short title of this rule?**
APC&EC Regulation No. 23, 2010 Annual Update

- 2. **What is the subject of the proposed rule?**
Hazardous Waste Management

- 3. **Is this rule required to comply with a federal statute, rule, or regulation?**
Yes XX No _____

If yes, please provide the federal rule, regulation, and/or statute citation.
40 CFR Part 271

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No XX

If yes, what is the effective date of the emergency rule? N/A
When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____ N/A

5. Is this a new rule? Yes _____ No XX If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No XX If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes XX No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

Mark-up attached as Exhibit "A" to the rulemaking packet. A summary of each revision is provided in the petition in the rulemaking packet.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Arkansas Hazardous Waste Management Act, A.C.A. §§ 8-7-209(b)(1)

7. What is the purpose of this proposed rule? Why is it necessary?

Adopts newly-revised federal rules published between July 1, 2009 and August 31, 2010; makes editorial revisions to existing provisions. These revisions are necessary to keep the state hazardous waste regulations current with the corresponding federal requirements.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

9. Will a public hearing be held on this proposed rule? Yes XX No _____
If yes, please complete the following:

Date: November 3, 2010

Time: 2:00 p.m.

Place: at the Department headquarters at 5301 Northshore Drive, North Little Rock.

10. When does the public comment period expire for permanent promulgation?
(Must provide a date.) 4:30 p.m., November 17, 2010

11. What is the proposed effective date of this proposed rule? (Must provide a date.) April, 2011 (10 business days following filing of the rulemaking decision with the office of the Secretary of State, after March, 2011 APC&E Commission meeting)

12. Do you expect this rule to be controversial? Yes ___ No XX If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

| NAMES, ADDRESSES, & PHONE NUMBERS | FOR | AGAINST |
|---|-----|---------|
| Arkansas Environmental Federation, 1400 W. Markham Street, Suite 302, Little Rock, AR 72201, (501) 374-0263 | X | |
| | | |
| | | |
| | | |

EXHIBIT C:

Financial Impact Statement

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality
DIVISION Hazardous Waste Division
PERSON COMPLETING THIS STATEMENT Tom Ezell
TELEPHONE No. (501) 682-0854 **FAX No.** (501) 682-0565 **EMAIL:** ezell@adeq.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

APC&EC Regulation No. 23, 2010 Annual Update

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes XX No _____
2. Does this proposed, amended, or repealed rule affect small businesses?
Yes XX No _____

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

Attached as Exhibit "F" to the rulemaking packet

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

N/A
4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

| <u>Current Fiscal Year (2011)</u> | | <u>Next Fiscal Year (2012)</u> | |
|-----------------------------------|---------------|--------------------------------|---------------|
| General Revenue: | \$0.00 | General Revenue: | \$0.00 |
| Federal Funds: | \$0.00 | Federal Funds: | \$0.00 |
| Cash Funds: | \$0.00 | Cash Funds: | \$0.00 |
| Special Revenue: | | Special Revenue: | |
| Other (Identify): | | Other (Identify): | |
| Total: | \$0.00 | Total: | \$0.00 |

These additional program elements will be carried out with the currently authorized/existing staff and associated resources, so there is no discernible increase in program, administrative, or logistic costs to the Department from implementing these revisions.

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

| <u>Current Fiscal Year (2011)</u> | | <u>Next Fiscal Year (2012)</u> | |
|-----------------------------------|---------------|--------------------------------|---------------|
| N/A | \$0.00 | N/A | \$0.00 |
| Total: | \$0.00 | Total: | \$0.00 |

Regulation No. 23 affects all businesses and facilities which generate or manage hazardous wastes, used oil, and universal wastes. As of August 31, 2010, this addressed approximately 4,555 facilities and businesses in Arkansas, of which 1,275 actively manage hazardous wastes. The regulatory changes in this proposal are equivalent to previous state and federal requirements, so regulated facilities are anticipated to incur no additional costs to doing business or maintaining compliance. These costs will vary widely by the nature of each affected facility, and it would be speculative to estimate these costs over the wide range of businesses and operations subject to the hazardous waste management program.

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

| <u>Current Fiscal Year (2011)</u> | | <u>Next Fiscal Year (2012)</u> | |
|-----------------------------------|---------------|--------------------------------|---------------|
| Federal Funds: | \$0.00 | Federal Funds: | \$0.00 |
| Special Revenue: | \$0.00 | Special Revenue: | \$0.00 |
| Total: | \$0.00 | Total: | \$0.00 |

Implementing these proposed revisions will not discernibly increase or decrease program operational or administrative costs.

EXHIBIT D:

**Compliance with
Act 143 of 2007**

Compliance with Act 143 of 2007 (formerly Executive Order 05-04)

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

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)(2)(C)). This proposal incorporates a number of revisions to the federal hazardous waste regulations previously promulgated by the U.S. EPA to the corresponding sections of Regulation No. 23, and additionally makes a number of typographic corrections to existing state provisions in the Regulation.

Pursuant to the Federal Resource Conservation and Recovery Act (“RCRA”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer the federal hazardous waste management program within its borders. This program is administered through the Arkansas Hazardous Waste Management Act, and state and federal regulations codified in the Arkansas Pollution Control & Ecology Commission’s Regulation No. 23. RCRA requires that states authorized to carry out the hazardous waste management program in lieu of EPA must review their program regulations on an annual basis and adopt new federal revisions to ensure that the state program regulations remain consistent with and no less stringent than the corresponding federal regulations. As a result of this review process, ADEQ proposes to adopt specific federal regulations promulgated by EPA between July 2009 and August 2010, and incorporate these provisions into portions of Regulation No. 23, Hazardous Waste Management. The regulatory revisions that are subject of this rulemaking have been deemed necessary through this federally mandated review. In addition to these federal revisions, a number of typographic corrections are made to existing state provisions in the regulation. No additional requirements are being proposed that substantially affect small businesses beyond the current requirements.

Therefore, 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 federal regulations. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)).

EXHIBIT E:

**ENVIRONMENTAL IMPACT/ECONOMIC
BENEFIT ANALYSIS**

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Rule Number & Title: Regulation No. 23, Hazardous Waste Management
Petitioner: ADEQ Hazardous Waste Division
Contact/Phone/Electronic mail: Clyde Rhodes, 682-0831, rhodes@adeq.state.ar.us
Analysis Prepared By: Tom Ezell, (501) 682-0854
Date Analysis Prepared: August 25, 2010

STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT

| Is the proposed rule exempt from economic impact/environment benefit analysis for one of the following reasons? | YES | NO |
|---|-----|----|
| ▶ The proposed rule incorporates the language of a federal statute or regulation without substantive change | X | |
| ▶ The proposed rule incorporates or adopts the language of an Arkansas state statute or regulation without substantive change | | X |
| ▶ The proposed rule is limited to matters arising under Regulation No. 8 regarding the rules of practice or procedure before the Commission | | X |
| ▶ The proposed rule makes only <i>de minimis</i> changes to existing rules or regulations, such as the correction of typographical errors, or the renumbering of paragraphs or sections; or | X | |
| ▶ The proposed rule is an emergency rule that is temporary in duration. | | X |

If the proposed rulemaking does not require the following Analysis due to one or more of the exemptions listed above, state in the Petition to Initiate Rulemaking which exemptions apply, and explain specifically why each is applicable.

RULE SUMMARY:

I. Federal Revisions

I.1: 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.

EPA published its cost estimate and benefit analysis for this rule at 75 FR 1249-1250, anticipating a nationwide impact (all 50 states, plus territories) of \$910,000 for the first year of implementation and \$460,000 for each subsequent year. ADEQ staff have reviewed this analysis and the federal rulemaking docket, and compared this to Arkansas annual hazardous waste report data for the foreign export of batteries, and determined that this revision will have minimal effect on Arkansas handlers.

I.2: 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.

EPA conducted a review of the financial impact of this rule (75 FR 13000) and determined that as it is entirely editorial in nature and contains no federal mandates, that it posed no significant financial impact to regulated hazardous waste handlers. ADEQ staff have reviewed EPA's analysis in both the FR notice and the rulemaking docket, and concurred with this analysis.

I.3: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion. 75 FR 51671-51678, August 21, 2010. This federal rule 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.

This rulemaking affects only a single, specific facility (Tokusen, Inc., in Conway) and while it should result in significant savings for the Tokusen facility, has no financial impact or beneficial effect for any other Arkansas facility.

II. State Revisions:

II. 1 Regulations Incorporated by Reference

This administrative amendment moves forward the window within which specific federal regulations listed at Section 3(b)(1) through (4) are incorporated by reference to those published in the Federal Register on or before August 31, 2010. No economic impact is anticipated for this action.

| |
|--------------------------------------|
| <h2>STEP 2: THE ANALYSIS</h2> |
|--------------------------------------|

Federal revisions discussed in Paragraph I above are not subject to this requirement for economic analysis and environmental benefit, as they codify existing Federal regulations.

The impact and benefit of State-initiated revisions in Paragraph II above are addressed below:

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

With the exception of the site-specific delisting decision for Tokusen, Inc. in Conway, no significant economic impact is anticipated to any regulated facility from these amendments.

Sources and Assumptions: See above discussion of the financial impact of each federal revision.

2. What are the economic effects of the proposed rule?

State: 1) the estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

No economic impact is created by the state-initiated revisions in this proposed rulemaking.

Sources and Assumptions: N/A

3. List any fee changes imposed by this proposal, and the justification for each.

None.

4. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?

No additional costs to ADEQ are anticipated from the state-initiated revisions in this proposed rulemaking.

Sources and Assumptions: N/A

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

No.

Sources and Assumptions: N/A

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose as this proposed rule?

No.

Sources and Assumptions: N/A

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

None. The state-initiated revisions in this proposed rulemaking are purely administrative in nature.

2. How does this rule protect, enhance, or restore the natural environment for the well being of all Arkansans?

Arkansas businesses will continue to benefit from a regulatory environment that is equivalent to the corresponding Federal requirements, and effective in ensuring that hazardous wastes and similar regulated materials are managed in an environmentally safe manner.

Sources and Assumptions: N/A

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

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.

Sources and Assumptions: N/A

4. What risks are addressed by the proposal and to what extent are these risks anticipated to be reduced?

None. The state-initiated revisions in this proposed rulemaking are purely administrative in nature.

Sources and Assumptions: N/A

EXHIBIT F:

**Economic Impact Statement:
Regulatory Flexibility**

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

Department: Dept. of Environmental Quality

Division: Hazardous Waste

Contact Person: Tom Ezell

Date: August 25, 2010

Contact Phone: (501) 682-0854

Contact E-Mail: ezell@adeq.state.ar.us

Title or Subject: APC&EC Regulation No. 23 (Hazardous Waste Management) 2009 Update

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

ADEQ has been delegated responsibility for implementing both federal and state provisions for the RCRA hazardous waste management program in Arkansas. This delegation is contingent upon the State maintaining a regulatory program that is consistent with and no less stringent than the corresponding federal requirements. Annually, ADEQ initiates rulemaking procedures via the Arkansas Pollution Control and Ecology Commission to incorporate and adopt recent changes to the federal regulations in order to maintain equivalence and consistency between the state and federal hazardous waste management regulations. This proposal seeks to incorporate relevant changes to federal regulations published since July 2009. Complaints played no role in the development of these draft revisions.

2. What are the top three benefits of the proposed rule or regulation?

- Maintains equivalence between State and new or revised Federal hazardous waste management regulations;
- Adopts a federal delisting decision which benefits an Arkansas manufacturer.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

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.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

This rulemaking substantially codifies existing, revised Federal regulations into the corresponding State regulation. As such, they are not subject to the provisions of Sections 3-5 of Executive Order 05-04. 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.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

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.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

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 July 1, 2010, 4,555 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 July 1, 2010, 279 SQGs 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."

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

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.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

Small businesses which accumulate and subsequently ship spent lead-acid batteries overseas or outside the United States, whether under the hazardous waste or universal waste management rules, will be required to meet the new international treaty requirements for documentation and tracking of these shipments. EPA published its cost estimate and benefit analysis for this rule at 75 FR 1249-1250, anticipating a nationwide impact (all 50 states, plus territories) of \$910,000 for the first year of implementation and \$460,000 for each subsequent year. ADEQ staff have reviewed this analysis and the federal rulemaking docket, and compared this to Arkansas annual hazardous waste report data for the foreign export of batteries, and determined that this revision will have minimal effect on Arkansas handlers.

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

As noted above, 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.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

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 the existing regulations, small businesses should realize reduced administrative burdens and costs in carrying out these provisions within their operations.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The revisions proposed here are equivalent to the corresponding federal rules in Title 40, Code of Federal Regulations. 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 in 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.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In September 2010, ADEQ met with the Hazardous Waste Subcommittee of the Arkansas Environmental Federation, which represents industry and small businesses affected by the federal and state waste management programs. No objection was raised to the revisions proposed in this rulemaking.

EXHIBIT G:

Scheduling Minute Order

On September 10, 2010, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 23 (Hazardous Waste Management) (hereafter "Petition"). The Petition has been designated as Docket No. 10-007-R.

The Commission's Regulations Committee met on September 24, 2010 to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revisions to Regulation No. 23.

1. The Department shall file an original and two (2) copies and a computer disk in Microsoft Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on November 3, 2010, at 2:00 p.m. at the Department's offices at 5301 Northshore Drive North Little Rock.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8.806, unless an extension of time is granted.

5. The Department shall file, not later than fourteen (14) days before the Commission meets to consider adoption of this proposed rule, a Statement of Basis and Purpose as required by Regulation No. 8.815.

ARKANSAS POLLUTION
CONTROL AND ECOLOGY
COMMISSION

PETITION TO INITIATE RULEMAKING

Regulation No. 23
Docket No. 10-007-R

MINUTE ORDER NO. 10 -

PAGE 2 OF 4

6. The Department shall file, not later than fourteen (14) days before the Commission meets to consider adoption of the proposed rule, a proposed Minute Order deciding this matter.

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee may consider this matter at its March 2011 meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendment to the regulation after review by the appropriate legislative committees. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At the Commission meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair in his discretion, may extend the one (1) hour oral statement period.

b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. The Commission finds the proposed regulation is exempt from Act 143 of 2007 (formerly Executive Order 05-04), as amended by Act 809 of 2009, because the proposed rule substantially codifies existing state or federal law.

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COMMISSION

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Regulation No. 23
Docket No. 10-007-R

MINUTE ORDER NO. 10 -

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The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 10-007-R effective September 24, 2010. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

| | |
|----------------------|-------------------|
| _____ J. Bates | _____ L. Sickel |
| _____ L. Bengal | _____ J. Simpson |
| _____ J. Chamberlain | _____ W. Thompson |
| _____ S. Henderson | _____ B. White |
| _____ J. Lowery | _____ R. Young |
| _____ D. Samples | |
| _____ J. Shannon | |

_____ **SUBMITTED BY:** Clyde Rhodes **DATE PASSED:** 9/24/2010
Chairman