

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

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

DOCKET NO. 12-001-R

**PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 23,
HAZARDOUS WASTE MANAGEMENT**

Pursuant to the provisions of Arkansas Code, Ann., § 8-7-209(b)(1), 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 (hereafter “U.S. EPA” or “EPA”) has promulgated specific changes to the hazardous waste management regulations (40 CFR Parts 260-279) published in the *Federal Register* between June 10, 2010, and December 31, 2011, 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) Withdrawal of the Emission Comparable Fuel Exclusion. 75 FR 33712-33724, June 10, 2010. This federal rule withdrew a conditional exclusion from Federal regulations promulgated on December 19, 2008 at 73 FR 77954-78017 for so-called Emission Comparable Fuels (ECF). These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate

emissions that are comparable to emissions from burning fuel oil in those boilers. EPA withdrew this conditional exclusion because the Agency concluded in response to public comments and subsequent litigation that ECF was more appropriately classified as a discarded material and regulated as a hazardous waste. Existing exclusions for comparable fuels and synthesis gas fuels were not addressed or otherwise affected by this rule. The Commission did not adopt the December 2008 Federal exclusion for emission comparable fuels. When EPA published this notice rescinding the exclusion for emission comparable fuels and reinstating most of the previous requirements under 40 CFR 261.38, numerous changes were made to the previous language at 40 CFR 261.38 and its accompanying Table 1, and the more stringent, 2008 federal standards for comparable fuels were carried over into the reinstatement of the provisions of this section. The Department is therefore proposing to adopt the revised federal provisions at Regulation No. 23, § 261.38 to maintain equivalence between the State regulations at § 261.38 and the corresponding Federal rules. (Note: while the December 2008 ECF rule deleted two columns, “composite value” and “heating value” from Table 1 at § 261.38, and the updated, reinstated June 2010 Federal rule also omitted these columns, we are proposing to retain these values in Table 1 for reference purposes).

(B) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances. 75 FR 78918-78926, December 17, 2010. This federal rule removed saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded.

(C) Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. 75 FR 79304-79308, December 20, 2010. This Federal rule made technical corrections to six provisions under the 40 CFR 262, Subpart K “Academic Laboratories” rule.

(D) Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes. 76 FR 34147-34157, June 13, 2011. This Federal rule provided alternative treatment standards allowing for the use of best demonstrated available technologies (BDAT) for treating hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. In addition, this action removed carbamate regulated constituents from the table of Universal Treatment Standards.

(E) Hazardous Waste Manifest Printing Specifications Correction Rule. 76 FR 36363-36366, June 22, 2011. This federal revision amended the printing specification regulations for uniform hazardous waste manifests to indicate that the use of red ink, as well as other distinct colors, or other methods to distinguish the copy distribution

notations from the rest of the printed form and data entries is permissible (rather than required) for commercially-printed manifests as well as manifests from other authorized sources.

(F) **Miscellaneous Technical Corrections.** EPA promulgated an extensive “Burden Reduction Rule” on April 4, 2006, at 71 FR 16862. The Department recommended and the Commission adopted the provisions of this federal rule piecemeal, and in that process several paragraphs from that rule were inadvertently omitted from the Commission’s rulemaking initiated in January 2008 in Docket No. 08-002-R. Since the adoption of that Rulemaking, the Department and U.S. EPA Region 6 have reviewed Regulation No. 23 and recommended that the following provisions of EPA’s burden reduction rule be incorporated into the Regulation for more clear consistency with the corresponding federal rules. The Department is therefore proposing the adoption of specific technical and editorial amendments to the following rules addressed under the Burden Reduction rule as well similar federal corrections in Title 40 of the Code of Federal Regulations:

- **§ 264.16(a)(4):** Allows a more streamlined approach to providing OSHA emergency response training under the provisions of 29 CFR 1910.120(p)(8) and 1910.120(g);
- **§ 264.195(b)-(h):** Provides a more streamlined, comprehensive approach to weekly inspections of hazardous waste tank storage units;
- **§ 265.251(c):** An editorial correction which deletes past deadlines for installing liners at existing waste pile units;
- **§ 264.301(e)(2)(i)(C):** Incorporates a federal revision changing the reference for “underground drinking water source” from 40 CFR 144 to an internal reference in Regulation No. 23, as § 270.2;
- **§ 264.314(a):** Revises the prohibition of disposal of bulk or non-containerized liquids in RCRA Subtitle C hazardous waste landfills;
- **§ 264.552(e)(4)(iv)(F):** Incorporates a change in reference to the Toxicity Characteristic Leaching Procedure (TCLP) from 40 CFR 144.3 to an internal reference in Reg. No. 23 § 260.11;
- **§ 264.1030(c):** Clarifies that until such time as a RCRA facility operator subject to the provisions for air emission standards for process vents receives a final permit for affected units, he or she remains subject to the appropriate requirements under Section 265, Subsection AA of Regulation No. 23;
- **§ 265.1(c)(4):** Reasserts the requirements for operators of underground injection wells subject to RCRA interim status or equivalent controls to comply with the federal standards for these activities;
- **§ 265.142(a):** Makes an editorial correction to confirm that operators of hazardous waste containment buildings under RCRA interim status must comply with the annual requirements to prepare and update a closure cost estimate;
- **§ 268.7(b)(3)(ii):** Streamlines the exchange of LDR notifications between generators and treatment, storage, and disposal facilities by requiring only the manifest number of the first waste shipment if the characteristics of the waste stream do not change.
- **§ 273.34(d):** Makes an editorial revision to the provisions for labeling containers of universal waste mercury-containing devices.

3. The following state-specific revisions are proposed for inclusion in Regulation No. 23:

(A) **Section 3(b)** is amended to reflect the updated window (through December 31, 2011) for Federal regulations adopted or incorporated by reference.

4. Line-by-line details of the proposed revisions are shown at Exhibit “A.”

5. *Compliance with Act 143 of 2007.* Analyses of anticipated costs and their potential impacts and benefits to small and other businesses are provided pursuant to the provisions of Act 143 at Exhibits D and E of this rulemaking docket.

6. 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 proposed 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 addressing 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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