

ADEQ

ARKANSAS
Department of Environmental Quality

SOLID WASTE MANAGEMENT DIVISION

February 9, 2006

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RESPONSIVE SUMMARY TO COMMENTS

ARKANSAS REGULATION 27

Responsive Summary to Comments received from the Public Concerning Proposed Changes to Arkansas Regulation Number 27 as prepared for the Arkansas Pollution Control and Ecology Commission's pending rulemaking on Regulation 27, Licensing of Operators of Solid Waste Management Facilities and Illegal Dumps Control Officers



Mailing List – Responsive Summary to Comments

Public Hearing, Little Rock, December 13, 2005

Oral Comment Received:

Mark Witherspoon, Chairman
Solid Waste Licensing Committee
c/o Genesis Environmental Consulting, Inc.
11400 W. Baseline Road
Little Rock, AR 72209

Written Comments Received:

Elizabeth Anne Weinstein
Attorney Specialist
ADEQ, Legal Division
P.O. Box 8913
Little Rock, AR 72219-8913

Response to Comments

COMMENT ID:	001	AGREE	<input checked="" type="checkbox"/>	DISAGREE	
Comments: (Mark Witherspoon, Chair, Solid Waste Licensing Committee)					
...The proposed changes will clarify the duties and responsibilities of the Committee...the Solid Waste Licensing Committee supports the changes in the regulation...					
Response:					
ADEQ agrees with comments made.					
Notes:					

COMMENT ID:	002	AGREE	<input checked="" type="checkbox"/>	DISAGREE	
Comments from: (Elizabeth Anne Weinstein on behalf of ADEQ)					
The proposed change to the definition of "recovered materials" was in conflict with the statutory definition in Ark. Code Ann. §8-6-901 (10)(A)...The change must be made in the law, if it is to be made...APC&EC is not authorized to alter the meaning of terms defined by the legislature, therefore, the proposed change in the definition of recovered materials should be withdrawn.					
Response:					
ADEQ agrees with comments made.					
Notes:					

Mr. Doug Szenher, Planning Section Manager
Customer Service Division
Arkansas Department of Environmental Quality
P.O. Box 8913
Little Rock, Arkansas 72219

RE: Arkansas Pollution Control & Ecology Commission Draft Regulation 27

Dear Mr. Szenher:

The purpose of this letter is to provide you with written comments made by the Solid Waste Management Division regarding proposed changes to the Arkansas Pollution Control and Ecology Commission (“APC&EC”) Regulation 27. This regulation addresses the subject matter of Ark. Code Ann. § 8-6-901 et seq., entitled Licensing of Operators of Solid Waste Management Facilities,

Ark. Code Ann. § 8-6-901 et seq., governs the licensure of persons and entities that engage in solid waste management. Ark. Code Ann. § 8-6-901 (7)(A) requires the licensing of “any person who performs operations of a solid waste management facility...” Those persons and entities operating facilities that are deemed to be engaged solely in recycling or are not handling solid waste are not subject to the same licensure requirements. See, Ark. Code Ann. §8-6-901 10(B), § 8-6-901 (13)(B). In the statute, “recovered materials” has a different definition from what is found in the proposed Regulation 27 definition of “recovered materials”. The statute reads as follows:

(10)(A) "Recovered materials" means:

- (i) Metal;
- (ii) Paper;
- (iii) Glass;
- (iv) Plastic;
- (v) Textiles;
- (vi) Yard trimmings not destined for composting; or
- (vii) ***Rubber materials which are not waste tires or waste tire residuals***, that have known recycling potential, can be feasibly recycled, and have been diverted and source-separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other but do not include materials destined for any use that constitutes disposal. (Emphasis added.)

Recovered materials in this statute are not defined as solid waste. Waste tires and waste tire residuals are solid waste.

The proposed definition of “recovered materials” in Regulation 27 reads as follows:

Recovered Materials -includes but is not limited to metal, paper, glass, plastic, textile, yard trimmings, or *rubber materials that have known recycling potential, can be feasibly recycled*, and have been diverted and source separated or have been removed from the solid waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste for purposes of this regulation.

The definition in the proposed regulation is in conflict with the statutory definition in Ark. Code Ann. § 8-6-901 (10)(A). Waste tires and waste tire residuals are not deemed to be solid waste in the proposed regulation.

The change in the definition was proposed to remedy inconsistent treatment of waste tires in existing APC&EC regulations. For example, waste tires and waste tire residuals may be interpreted to be post consumer wastes that are recyclables under the provisions of APC&EC Regulation 16. Waste tires and waste tire residuals may also be interpreted to be recyclables under the provisions of APC&EC Regulation 14. This conflict also exists in statutes governing solid waste and recycling. Waste tires are defined as solid waste in subchapter 6 of the Arkansas Solid Waste Management Act, but as a recyclable in subchapter 9.

Ark. Code Ann. § 8-6-905 authorizes the Arkansas Pollution Control and Ecology Commission (APC&EC) to adopt rules and regulation implementing the statutes codified in Ark. Code Ann. § 8-6-901 et seq. However, APC&EC is not authorized to alter the meaning of terms defined by the legislature within these statutes. *Pledger v. C.B. Form Co.*, 316 Ark. 22, 871 S.W.2d 333 (1994). The change proposed by ADEQ must be made in the law, if it is to be made. Accordingly, the proposed change in the definition of recovered materials should be withdrawn.

Sincerely yours,

Elizabeth Anne Weinstein
Attorney Specialist

cc: Mary Leath, Chief Deputy Director
Steve Martin, Chief, Solid Waste Management Division