

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

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

**DOCKET NO. 04-\_\_\_-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 (hereafter “U.S. EPA” or “EPA”) has promulgated changes to the hazardous waste management regulations (40 CFR Parts 260-279) published in the *Federal Register* between December 31, 2002 and July 1, 2004 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. ADEQ’s program memorandum of agreement with U.S.EPA Region VI calls for timely incorporation of these revisions into the Arkansas hazardous waste management program, codified in Regulation No. 23. Additionally, the Department is proposing amendments to existing portions of the State hazardous waste management program to reduce the risk of default in providing financial assurances for the completion of closure, post-closure, and other clean-up activities at hazardous waste management sites subject to the financial assurance requirements of Regulation No. 23, Sections 264 and 265, Subsections H; to facilitate the safe management and reclamation of consumer

electronic items which bear a characteristic of hazardous waste by including these wastes under the universal waste management provisions, and a number of editorial revisions to the Regulation..

2. EPA published only one regulatory revision to the federal hazardous waste management program during the time frame addressed above. The Department proposes the following federal revision for adoption and incorporation in Regulation No. 23:

(A) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, 68 FR 44665, July 30, 2003.

3. The Department proposes the following changes to the state-specific provisions of Regulation No. 23:

(A) Make an editorial revision to Section 262.13(f) to correct usage and grammar.

(B) Amend Section 264.140 to provide that post-closure contingency planning and financial assurances for post-closure care and third party liability should apply to open burn/open detonation (OB/OD) waste management units where soil and/or groundwater contamination has been identified as a result of the operations of said unit. By including these similar, but newly-defined types of waste management units, this is a more stringent provision than provided for under the current regulation.

(C) Define “captive insurance,” and clarify that captive insurance policies are inadequate to meet the requirements for compliant financial assurance under the provisions of Regulation No. 23, Sections 264 and 265,

Subsections H. This is a more stringent provision than provided for under the current regulation, but is equivalent to current Federal program guidance concerning these types of policies.

(D) Require that when insurance is used as a mechanism to provide financial assurance under the provisions of Regulation No. 23, Sections 264 and 265, Subsections H, a copy of the insurance policy must be provided along with the currently required certificate of insurance. This is a more stringent provision than provided for under the current regulation.

(E) Require that insurers issuing policies for financial assurance be recognized by the Arkansas Insurance Department, and be favorably rated by an independent insurance company rater such as Standard and Poor's, Moody's, or A.M. Best. This is a more stringent provision than provided for under the current regulation.

(F) Require that a company seeking to use the corporate financial test or corporate guarantee submit, in addition to the chief financial officer's letter and certifications from an independent auditor, a copy of the company's consolidated financial statements, to include all notes and attachments. This is a more stringent provision than provided for under the current regulation.

(G) Amend the provisions of Section 270.40(b) to require that upon change of ownership of a permitted treatment, storage, or disposal facility, the new owner must establish compliant financial assurance not later than the effective date of the change of ownership or operational control of the

facility. This is a more stringent provision than provided for under the current regulation.

(H) To provide for the management of “consumer electronic items” (e.g., electronic wastes, to include items containing cathode ray tubes (CRTs), personal computers and computer components, audio or video players, videocassette (VCR) and digital videodisk (DVD) recorders and players, video cameras, facsimile or copying machines, telephones, cellular telephones, wireless paging devices, video game consoles, and similar items) under the universal waste management standards of Section 273. This provision is considered “broader in scope” than the provisions of the RCRA waste management program as currently authorized by the US Environmental Protection Agency, yet would lessen the regulatory burden on generators of these consumer electronic wastes.

4. Tom Ezell, Program Support Manager in the Department’s Hazardous Waste Division, and Mike Bates, 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.) A copy of the Statement and Basis of Purpose is attached at Exhibit “B”. A copy of the Legislative Questionnaire attached as Exhibit “C”; and a

financial impact statement for the proposed revision, attached as Exhibit “D,” are hereby incorporated by reference.

A proposed minute order is attached as Exhibit “E” and is hereby incorporated by reference. WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 23.

Respectfully submitted,

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