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, (501) 682-0854	
ADDRESS	5301 Northshore Drive, North Little Rock, AR 72118	
PHONE NO: (501) 682-0831	**FAX NO:** (501) 682-0565	**E-MAIL:** rhodesc@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, 2011 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

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 Yes_____ No_**XX**___ If yes, a copy of the repealed rule is to be included with your completed questionnaire.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, 2010 and December 31, 2011; 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: March 8, 2012
Time: 2:00 p.m.
Place: in the Commission Room 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., March 22, 2012

11. **What is the proposed effective date of this proposed rule?** August 2012 (10 business days following filing of the rulemaking decision with the office of the Secretary of State, after the July 2012 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	

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.	**FAX No.**	**EMAIL:**
(501) 682-0854	(501) 682-0565	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, 2011 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 Exhibits "E" and "F" to this 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. Estimated costs are provided below.

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.

Current Fiscal Year (2012)		Next Fiscal Year (2013)	
General Revenue:	$0.00	General Revenue:	$0.00
Federal Funds:	$ 905,000.00	Federal Funds:	$ 905,000.00
Cash Funds:	$0.00	Cash Funds:	$0.00
Special Revenue:	~$ 2 million	Special Revenue:	~ $2 million
Other (Identify):		Other (Identify):	
Total:	$ 2.9 million	Total:	$ 2.9 million

No additional costs or savings to State agencies have been identified as a result of implementing these proposed revisions to Regulation No. 23. No additional costs or savings in federal funding to the State have been identified.

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.

Current Fiscal Year (2012)		Next Fiscal Year (2013)	
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.

Current Fiscal Year (2012)		**Next Fiscal Year (2013)**	
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 ongoing program operational or administrative costs. At the State level, these additional program elements will be carried out with the currently authorized/existing staff and associated resources, so there is no discernible additional increase in program, administrative, or logistic costs to the Department from implementing these revisions. Overall program costs are estimated as shown under Question 5 above, at approximately $2.9 million.

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

A copy of this rulemaking petition and all attachments was provided to the Arkansas Department of Economic Development via e-mail on November 16, 2011, with a follow-up copy of the final version provided on January 13, 2012. As of the date of filing this petition with the Commission Office, no comments have been received from the ADED.

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, rhodesc@adeq.state.ar.us
Analysis Prepared By:	Tom Ezell, (501) 682-0854
Date Analysis Prepared:	October 25, 2011

I. Federal Revisions

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 *de minimis* 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.1: 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 Commission is therefore proposing to adopt the revised federal provisions at Regulation No. 23, Section 261.38 to maintain equivalence between the State regulations at § 261.38 and the corresponding Federal rules.

EPA estimated the potential costs and impacts of this rule on a national basis during its development of the federal final rule, and published these estimates at USEPA, "Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," May 14, 2008; http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf; and USEPA, ``Revised Assessment of the Potential Costs, Benefits, and Other Impacts of the Expansion of the RCRA Comparable Fuel Exclusion-Final Rule," July 15, 2009. At the time that EPA's initial promulgation of the revised ECF rule came up for adoption at state level, EPA had already provided public notice of its intent to significantly revise or to withdraw the federal rule. Therefore, ADEQ did not propose the December 2008 federal rule for adoption by the Commission. Thus, we anticipate no additional financial or economic impact from reinstatement of the previous federal requirements, which have remained in place in Arkansas. This rulemaking incorporates a number of changes made in the reinstated federal rule to ensure conformity with the existing federal regulations.

In Arkansas, one (1) facility is affected by this rule, Rineco Chemical Industries in Haskell, in Saline County, which blends and manufactures hazardous waste-derived fuels for the cement kiln industry.

I.2: 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.

No Arkansas generators have been identified for this waste stream within the past three (3) annual hazardous waste reporting cycles, therefore no impact is anticipated on Arkansas businesses.

I.3: 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 (6) provisions under the 40 CFR 262, Subpart K "Academic Laboratories" rule. There are no changes which affect the stringency of this rule.

In Arkansas, two (2) facilities have notified ADEQ of their intent to manage their laboratory wastes under the provisions of Section 262 Subsection K: the University of Arkansas for Medical Sciences (UAMS, ARD981158405) in Little Rock, and Southern Arkansas University (ARR000021956) in Magnolia.

I.4: 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) and revises the Table of Treatment Standards 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 removes carbamate regulated constituents from the table of Universal Treatment Standards in Section 268.

In Arkansas, this rule potentially affects four (4) facilities which generated these wastes during the 2010 annual hazardous waste reporting period:

Facility	City	Waste Code	Quantity (2010)
Rineco Chemical Industries	Haskell	K161	25,548 lbs
BPS, Inc. Unit 2	Helena	U279	3,041 lbs
FutureFuels Chemical	Batesville	U404	1,029 lbs
Crop Production Services	Portland	U410	100 lbs

I.5: 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 for commercially-printed manifests as well as manifests from other authorized sources.

This revision affects only private companies which print hazardous waste manifests for their own use or for resale or distribution, and by removing the requirement for different colored inks, their printing and production costs are lessened. ADEQ no longer prints

manifests, and so is unaffected by this rule. No Arkansas companies are currently approved by the U.S. EPA to print and sell or distribute manifest forms.

I.6: Miscellaneous Technical Corrections. In developing the Burden Reduction Rule, from which these revision are derived, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an "Economic Background Document" as a component of the administrative record for the federal rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA's assessment of the costs and benefits of these measures.

STEP 2: THE ANALYSIS

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

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.

See notes on affected facilities in the above discussion.

Sources and Assumptions:

- Arkansas RCRAInfo database
- Arkansas 2010 Annual Hazardous Waste Report
- U.S. EPA Hazardous Waste Manifest Registry, on-line at http://www.epa.gov/osw/hazard/transportation/manifest/registry/printers.htm
- 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.

In that the proposed revisions make administrative changes to existing waste management requirements, these revisions will not have a significant statewide adverse impact directly affecting business, including the ability of Arkansas businesses to compete with businesses in other states. Nor will these revisions adversely affect small businesses in Arkansas. ADEQ staff is not aware of any

cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed revised regulations. The proposed regulatory revisions will have no effect on the creation or elimination of jobs in Arkansas. Nor will the proposed regulatory revisions have any effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within Arkansas.

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 additional costs or savings have been identified to any state or local agency as a result of implementing the proposed regulatory revisions.

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 reasonable alternative would be more or equally effective in carrying out the purposes for which the proposed regulations are intended, or less burdensome to affected private persons or businesses than the proposed action. Interested persons may present statements or arguments with respect to alternatives to the proposed regulations during the public comment period or at any hearing on this matter.

Sources and Assumptions: N/A

2B. **ENVIRONMENTAL BENEFIT**

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

See above discussion of the individual rules.

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?

None. Existing rules are currently protective of health and the environment. These updates are adopted to maintain consistency with corresponding Federal regulations.

Sources and Assumptions: N/A

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

Lessens risk of potential mismanagement of hazardous wastes.

Sources and Assumptions: N/A

II. State Revisions:

RULE SUMMARY:

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 December 31, 2011. No economic impact is anticipated for this action.

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 *de minimis* 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.

STEP 2: THE ANALYSIS

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.

As the affected paragraph 3(b)(4) principally incorporates federal delisting decisions for facilities located outside Arkansas, only out-of-state generator facilities which have received a final delisting decision pursuant to 40 CFR 260.22 would be affected if their delistings were not applicable in Arkansas and the delisted wastes were shipped to an Arkansas TSDF or on public highways through Arkansas.

Sources and Assumptions:

- Regulation No. 23, Section 261, Appendix IX (approved delistings for Arkansas facilities)

- 40 CFR 261, Appendix IX (federally-approved delistings, nation-wide)

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.

In that the proposed revisions make administrative changes to existing waste management requirements, these revisions will not have a significant statewide adverse impact directly affecting business, including the ability of Arkansas businesses to compete with businesses in other states. Nor will these revisions adversely affect small businesses in Arkansas. ADEQ staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed revised regulations. The proposed regulatory revisions will have no effect on the creation or elimination of jobs in Arkansas. Nor will the proposed regulatory revisions have any effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within Arkansas.

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?

None; no additional revenue necessary for these specific revisions.

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 additional costs or savings have been identified to any state or local agency as a result of implementing the proposed regulatory revisions.

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 reasonable alternative would be more or equally effective in carrying out the purposes for which the proposed regulations are intended, or less burdensome to affected private persons or businesses than the proposed action. Interested persons may present statements or arguments with respect to alternatives to the proposed regulations during the public comment period or at any hearing on this matter.

Sources and Assumptions: N/A

2B. ENVIRONMENTAL BENEFIT

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

Consistency with Federal regulations concerning management of hazardous wastes.

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?

None.

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, this revision is purely administrative in nature.

Sources and Assumptions: N/A

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:	October 25, 2011
Contact Phone:	(501) 682-0854	Contact E-Mail:	ezell@adeq.state.ar.us

Title or Subject: APC&EC Regulation No. 23 (Hazardous Waste Management) 2011 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 federal 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 August 2010.

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;

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. With little attempt to maintain consistency with corresponding Federal regulations, companies face an additional administrative burden in researching differences and maintaining compliance with both sets of regulatory standards.

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.

Portions of this rulemaking substantially codify 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. State-initiated portions of this proposal would implement the discontinuation of a federal incentive program which has been formally withdrawn by EPA, but for which a federal regulatory correction has not yet been made. 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. No reasonable alternative would be more or equally effective in carrying out the purposes for which the proposed regulations are intended, or less burdensome to affected private persons or businesses than the proposed action. Interested persons may present statements or arguments with respect to alternatives to the proposed regulations during the public comment period or at any hearing on this matter.

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 which 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 October 1, 2011, 4,780 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 October 1, 2011, 185 large-quantity generators, 310 SQGs and 1,273 CESQGs were known to be active in Arkansas.

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.

This rulemaking does not add any additional regulatory burden on small business owners. Where regulatory requirements are revised, the revisions for the most part entail some degree of relief from previous regulatory burdens.

The proposed revisions will not have a significant statewide adverse impact directly affecting business, including the ability of Arkansas businesses to compete with businesses in other states. Nor will these revisions adversely affect small businesses in Arkansas. ADEQ staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed revised regulations. The proposed regulatory revisions will have no effect on the creation or elimination of jobs in Arkansas. Nor will the proposed regulatory revisions have any effect on the creation of new businesses, the elimination of existing businesses, or the expansion of existing businesses doing business within Arkansas.

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 January 2012, 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.

EXECUTIVE SUMMARY
REVISIONS TO APC&EC REGULATION No. 23
(HAZARDOUS WASTE MANAGEMENT)
Proposed January 26, 2012

The Arkansas Pollution Control and Ecology Commission (APC&EC) proposes to amend its Regulation No. 23 (Hazardous Waste Management) in order to adopt Federal revisions to the hazardous waste management rules. A public hearing will be held at the Arkansas Department of Environmental Quality's (ADEQ) headquarters in North Little Rock on March 8, 2012, to receive comments on the proposed revisions. This hearing will begin at 2:00 p.m. in the Commission Room at the ADEQ headquarters building at 5301 Northshore Drive. The deadline for submitting written comments on the proposed changes is 4:30 p.m. on March 22, 2012.

The federal regulation changes which are proposed to be added to Regulation 23, listed by topic and date of publication in the *Federal Register*, include:

1. **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. 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.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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):** I ncorporates 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.

A detailed listing of the proposed changes to Regulation 23 can be found on the Drafts of Proposed Regulations page of the ADEQ's Internet web site at http://www.adeq.state.ar.us/regs/drafts/reg23_draft_docket_12-001-R/reg23_draft_docket_12-001-R.htm .

Oral and written comments will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. March 22, 2012. Written comments should be delivered or mailed to: Doug Szenher, public information coordinator, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: reg-comment@adeq.state.ar.us .

EXHIBIT A:

PROPOSED RULE CHANGES

(MARK-UP OF REVISED SECTIONS ONLY)

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION No. 23

HAZARDOUS WASTE MANAGEMENT

INITIAL DRAFT

Submitted to
the Pollution Control and Ecology Commission
in January 2012

REGULATION No. 23
HAZARDOUS WASTE MANAGEMENT

TABLE OF CONTENTS

CHAPTER 1.

CHAPTER 2.

Section 260. HAZARDOUS WASTE MANAGEMENT SYSTEM – GENERAL

Section 261. IDENTIFICATION & LISTING OF HAZARDOUS WASTE

Section 262. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Section 265. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, & DISPOSAL FACILITIES

Section 266. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

Section 267. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

Section 268.

LAND DISPOSAL RESTRICTIONS

Section 270. ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Proposed Itemized Revisions to Regulation No. 23
2011 Annual Update

Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated August 26, 2011, are amended as itemized below:

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 ~~August 31,2010~~ **December 31, 2011.**

2. **Section 261.33** is amended by removing the entries for the U202 hazardous waste code (Saccharin) in the table under paragraph (f).

3. Previous provisions at **Section 261.38** are deleted in their entirety and replaced by the following federal provisions:

~~**§261.38 Comparable/Syngas Fuel Exclusion.**~~

~~Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:~~

~~(a) Comparable fuel specifications. (1) Physical specifications.~~

~~(i) Heating value. The heating value must exceed 5,000 BTU/lbs. (11,500 J/g).~~

~~(ii) Viscosity. The viscosity must not exceed: 50 cs, as fired.~~

~~(2) Constituent specifications. For compounds listed in Table 1 to this paragraph the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 on following page).~~

~~(b) Synthesis gas fuel specification. Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:~~

~~(1) Have a minimum Btu value of 100 Btu/Scf;~~

~~(2) Contain less than 1 ppmv of total halogen;~~

~~(3) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);~~

~~(4) Contain less than 200 ppmv of hydrogen sulfide; and~~

~~(5) Contain less than 1 ppmv of each hazardous constituent in the target list of Appendix VIII constituents of this Section.~~

~~(c) Implementation. Waste that meets the comparable or syngas fuel specifications provided by paragraphs (a) or (b) of this section (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in paragraphs (c)(3) or (4) of this section) is excluded from the definition of solid waste provided that the following requirements are met:~~

~~(1) Notices. For purposes of this section, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.~~

~~(i) State RCRA and CAA Directors in Authorized States or Regional RCRA and CAA Directors in Unauthorized States.~~

~~(A) The generator must submit a one time notice to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying~~

compliance with the conditions of the exclusion and providing documentation as required by paragraph (c)(1)(i)(C) of this section;

(B) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated;

(C) A comparable/syngas fuel generator's notification to the Directors must contain the following items:

(1) The name, address, and RCRA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Codes for the hazardous waste;

(3) Name and address of the units, meeting the requirements of paragraph (c)(2) of this section, that will burn the comparable/syngas fuel; and

(4) The following statement which shall be signed and submitted by the person claiming the exclusion or his authorized representative: Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of Regulation No. 23 Section 261.38 have been met for all waste identified in this notification. Copies of the records and information required at APC&EC Regulation No. 23, § 261.38(c)(10) are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(ii) Public notice. Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:

(A) Name, address, and RCRA ID number of the generating facility;

(B) Name and address of the unit(s) that will burn the comparable/syngas fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and

(E) Name and mailing address of the Regional or State Directors to whom the claim was submitted.

(2) Burning. The comparable/syngas fuel exclusion for fuels meeting the requirements of paragraphs (a) or (b) and (c)(1) of this section applies only if the

fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable CAA MACT requirements:

(i) Industrial furnaces as defined in §260.10 of this regulation;

(ii) Boilers, as defined in §260.10 of this regulation, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under subsection O of Sections 264 or 265 of this regulation or applicable CAA MACT standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(3) Blending to meet the viscosity specification. A hazardous waste blended to meet the viscosity specification shall:

(i) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraphs (a)(1)(i) and (a)(2) of this section;

(ii) Be blended at a facility that is subject to the applicable requirements of Sections 264 and 265, or §262.34 of this regulation; and

(iii) Not violate the dilution prohibition of paragraph (c)(6) of this regulation.

(4) Treatment to meet the comparable fuel exclusion specifications. (i) A hazardous waste may be treated to meet the exclusion specifications of paragraphs (a)(1) and (2) of this section provided the treatment:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of Sections 264 and 265, or §262.34 of this regulation; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subsection D of this Section to generate a comparable fuel remain a hazardous waste.

(5) Generation of a syngas fuel. (i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (b) of this section provided the processing:

(A) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of Sections 264 and 265, or §262.34 of this regulation or is an exempt recycling unit pursuant to §261.6(c) of this regulation; and

(C) Does not violate the dilution prohibition of paragraph (c)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in subsection D of this Section to generate a syngas fuel remain a hazardous waste.

(6) Dilution prohibition for comparable and syngas fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph (a)(1)(i), (a)(2) or (b) of this section.

(7) Waste analysis plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

(i) At a minimum, the plan must specify:

(A) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;

(D) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.

(ii) The waste analysis plan shall also contain records of the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph (c)(7)(i) of this section to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(8) Comparable fuel sampling and analysis. (i) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on Appendix VIII to this Section, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:

(A) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream, or constituents for which there is a treatment standard for the waste code in § 268.40;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (c)(8): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.

(ii) For each waste for which the exclusion is claimed where the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph (c)(8)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(2) and (b) of this section have been met.

(iii) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:

(A) Each constituent of concern is not present in the waste above the specification level at the 95% upper confidence limit around the mean; and

(B) The analysis could have detected the presence of the constituent at or below the specification level at the 95% upper confidence limit around the mean.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in §262.11 of this regulation, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with their waste analysis plan developed under paragraph (c)(7) of this section.

(vii) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.

(viii) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:

(A) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and

(B) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.

(ix) Excluded comparable/syngas fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.

(9) Speculative accumulation. Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under §261.2(c)(4) of this regulation.

(10) Records. The generator must maintain records of the following information on site:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and RCRA facility ID number of the person claiming the exclusion;

(B) The applicable EPA Hazardous Waste Codes for each hazardous waste excluded as a fuel; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;

(iii) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph (c)(8)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (c)(8) of this section;

(vi) If the excluded waste was generated through treatment or blending, documentation as required under paragraph (c)(3) or (4) of this section;

(vii) If the waste is to be shipped off site, a certification from the burner as required under paragraph (c)(12) of this section;

(viii) A waste analysis plan and the results of the sampling and analysis that includes the following:

(A) The dates and times waste samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (c)(11) of this section and also provides for the availability of the documentation to the claimant upon request; and

(ix) If the generator ships comparable/syngas fuel off site for burning, the generator must retain for each shipment the following information on site:

(A) The name and address of the facility receiving the comparable/syngas fuel for burning;

(B) The quantity of comparable/syngas fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under paragraph (c)(8) of this section; and

(E) A one time certification by the burner as required under paragraph (c)(12) of this section.

(11) Records retention. Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three year period.

~~(12) Burner certification. Prior to submitting a notification to the Director and EPA Regional Administrator, a comparable/syngas fuel generator who intends to ship their fuel off site for burning must obtain a one-time written, signed statement from the burner:~~

~~(i) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (c)(2) of this section;~~

~~(ii) Identifying the name and address of the units that will burn the comparable/syngas fuel; and~~

~~(iii) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.~~

~~(13) Ineligible waste codes. Wastes that are listed because of presence of dioxins or furans, as set out in Appendix VII of this Section, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.~~

§ 261.38 Exclusion of comparable fuel and syngas fuel.

(a) Specifications for excluded fuels. Wastes that meet the specifications for comparable fuel or syngas fuel under paragraphs (a)(1) or (a)(2) of this section, respectively, and the other requirements of this section, are not solid wastes.

(1) Comparable fuel specifications.—

(i) Physical specifications.—

(A) Heating value. The heating value must exceed 5,000 Btu/lbs. (11,500 J/g).

(B) Viscosity. The viscosity must not exceed: 50 cS, as-fired.

(ii) Constituent specifications. For compounds listed in Table 1 to this section, the specification levels and, where non-detect is the specification, minimum required detection limits are: (see Table 1 of this section).

(2) Synthesis gas fuel specifications.—Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(i) Have a minimum Btu value of 100 Btu/Scf;

(ii) Contain less than 1 ppmv of total halogen;

(iii) Contain less than 300 ppmv of total nitrogen other than diatomic nitrogen (N_2);

(iv) Contain less than 200 ppmv of hydrogen sulfide; and

(v) Contain less than 1 ppmv of each hazardous constituent in the target list of appendix VIII constituents of this section.

(3) Blending to meet the specifications.

(i) Hazardous waste shall not be blended to meet the comparable fuel specification under paragraph (a)(1) of this section, except as provided by paragraph (a)(3)(ii) of this section:

(ii) Blending to meet the viscosity specification. A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

(A) As generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of paragraphs (a)(1)(i)(A) and (a)(1)(ii) of this section;

(B) Be blended at a facility that is subject to the applicable requirements of Sections 264, 265, or 267 or § 262.34 of this regulation; and

(C) Not violate the dilution prohibition of paragraph (a)(6) of this section.

(4) Treatment to meet the comparable fuel specifications.

(i) A hazardous waste may be treated to meet the specifications for comparable fuel set forth in paragraph (a)(1) of this section provided the treatment:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of Sections 264, 265, or 267, or § 262.34 of this regulation; and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in Subsection D of this section to generate a comparable fuel remain a hazardous waste.

(5) Generation of a syngas fuel.

(i) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of paragraph (a)(2) of this section provided the processing:

(A) Destroys or removes the constituents listed in the specification or raises the heating value by removing or destroying constituents or materials;

(B) Is performed at a facility that is subject to the applicable requirements of Sections 264, 265, or 267, or § 262.34 of this regulation or is an exempt recycling unit pursuant to § 261.6(c); and

(C) Does not violate the dilution prohibition of paragraph (a)(6) of this section.

(ii) Residuals resulting from the treatment of a hazardous waste listed in Subsection D of this Section to generate a syngas fuel remain a hazardous waste.

(6) Dilution prohibition. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of paragraphs (a)(1)(i)(A) or (a)(1)(ii) of this section for comparable fuel, or paragraph (a)(2) of this section for syngas.

(b) Implementation.

(1) General.

(i) Wastes that meet the specifications provided by paragraph (a) of this section for comparable fuel or syngas fuel are excluded from the definition of solid waste provided that the conditions under this section are met. For purposes of this section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator and the person burning the excluded fuel is called the excluded fuel burner.

(ii) The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this section and keeping records necessary to document compliance with those conditions.

(2) Notices.

(i) Notices to State RCRA and CAA Directors in authorized States or regional RCRA and CAA Directors in unauthorized States.

(A) The generator must submit a one-time notice, except as provided by paragraph (b)(2)(i)(C) of this section, to the Regional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(1) The name, address, and EPA ID number of the person/facility claiming the exclusion;

(2) The applicable EPA Hazardous Waste Code(s) that would otherwise apply to the excluded fuel;

(3) The name and address of the units meeting the requirements of paragraphs (b)(3) and (c) of this section, that will burn the excluded fuel;

(4) An estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by paragraph (b)(2)(i)(C) of this section; and

(5) The following statement, which shall be signed and submitted by the person claiming the exclusion or his authorized representative:

Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 and APC&EC Regulation No. 23 have been met for all comparable fuels identified in this notification. Copies of the records and information required at 40 CFR 261.38(b)(8) are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the

information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(B) If there is a substantive change in the information provided in the notice required under this paragraph, the generator must submit a revised notification.

(C) Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008 for newly excluded fuel or for revised notices as required by paragraph (b)(2)(i)(B) of this section.

(ii) Public notice. Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded Under the Resource Conservation and Recovery Act" and containing the following information:

(A) Name, address, and EPA ID number of the generating facility(ies);

(B) Name and address of the burner and identification of the unit(s) that will burn the excluded fuel;

(C) A brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

(D) An estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and

(E) Name and mailing address of the Regional or State Directors to whom the generator submitted a claim for the exclusion.

(3) Burning. The exclusion applies only if the fuel is burned in the following units that also shall be subject to Federal/State/local air emission requirements, including all applicable requirements implementing section 112 of the federal Clean Air Act:

(i) Industrial furnaces as defined in § 260.10 of this regulation;

(ii) Boilers, as defined in § 260.10 of this regulation, that are further defined as follows:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Hazardous waste incinerators subject to regulation under Subsection O of Sections 264 or 265 of this regulation and applicable CAA MACT standards.

(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(4) Fuel analysis plan for generators. The generator of an excluded fuel shall develop and follow a written fuel analysis plan which describes the procedures for sampling and analysis of the material to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

(i) At a minimum, the plan must specify:

(A) The parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

(B) The test methods which will be used to test for these parameters;

(C) The sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

(D) The frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(E) If process knowledge is used in the determination, any information prepared by the generator in making such determination.

(ii) For each analysis, the generator shall document the following:

(A) The dates and times that samples were obtained, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) who obtained the samples;

(C) A description of the temporal and spatial locations of the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any clean-up and sample preparation methods;

(F) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and the description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;

(G) All laboratory results demonstrating whether the exclusion specifications have been met; and

(H) All laboratory documentation that support the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in paragraph (b)(9) of this section and also provides for the availability of the documentation to the claimant upon request.

(iii) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of paragraph (b)(4)(i) of this section to the appropriate regulatory authority. The approval of fuel analysis

plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

(5) Excluded fuel sampling and analysis.

(i) General. For wastes for which an exclusion is claimed under the specifications provided by paragraphs (a)(1) or (a)(2) of this section, the generator of the waste must test for all the constituents in appendix VIII to this section, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent with an applicable specification should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 1 to this section should not be present:

(A) A constituent that triggered the toxicity characteristic for the constituents that were the basis for listing the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in § 268.40 of this regulation;

(B) A constituent detected in previous analysis of the waste;

(C) Constituents introduced into the process that generates the waste; or

(D) Constituents that are byproducts or side reactions to the process that generates the waste.

Note to paragraph (b)(5): Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

(ii) Use of process knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge pursuant to paragraph (b)(5)(i) of this section and must test to determine that all of the constituent specifications of paragraphs (a)(1) and (a)(2) of this section, as applicable, have been met.

(iii) The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

(A) The 95% upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

(B) The analyses could have detected the presence of the constituent at or below the specification level.

(iv) Nothing in this paragraph preempts, overrides or otherwise negates the provision in § 262.11 of this regulation, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.

(vi) The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under paragraph (b)(4) of this section.

(vii) Viscosity condition for comparable fuel.

(A) Excluded comparable fuel that has not been blended to meet the kinematic viscosity specification shall be analyzed as-generated.

(B) If hazardous waste is blended to meet the kinematic viscosity specification for comparable fuel, the generator shall:

(1) Analyze the hazardous waste as-generated to ensure that it meets the constituent and heating value specifications of paragraph (a)(1) of this section; and

(2) After blending, analyze the fuel again to ensure that the blended fuel meets all comparable fuel specifications.

(viii) Excluded fuel must be re-tested, at a minimum, annually and must be retested after a process change that could change its chemical or physical properties in a manner than may affect conformance with the specifications.

(6) (Reserved)

(7) Speculative accumulation. Excluded fuel must not be accumulated speculatively, as defined in § 261.1(c)(8).

(8) Operating record. The generator must maintain an operating record on site containing the following information:

(i) All information required to be submitted to the implementing authority as part of the notification of the claim:

(A) The owner/operator name, address, and EPA ID number of the person claiming the exclusion;

(B) For each excluded fuel, the EPA Hazardous Waste Codes that would be applicable if the material were discarded; and

(C) The certification signed by the person claiming the exclusion or his authorized representative.

(ii) A brief description of the process that generated the excluded fuel. If the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

(iii) The monthly and annual quantities of each fuel claimed to be excluded;

(iv) Documentation for any claim that a constituent is not present in the excluded fuel as required under paragraph (b)(5)(i) of this section;

(v) The results of all analyses and all detection limits achieved as required under paragraph (b)(4) of this section;

(vi) If the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of paragraphs (a)(3) and (a)(4) of this section;

(vii) If the excluded fuel is to be shipped off-site, a certification from the burner as required under paragraph (b)(10) of this section;

(viii) The fuel analysis plan and documentation of all sampling and analysis results as required by paragraph (b)(4) of this section; and

(ix) If the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

(A) The name and address of the facility receiving the excluded fuel for burning;

(B) The quantity of excluded fuel shipped and delivered;

(C) The date of shipment or delivery;

(D) A cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under paragraph (b)(4) of this section; and

(E) A one-time certification by the burner as required under paragraph (b)(10) of this section.

(9) Records retention. Records must be maintained for a period of three (3) years.

(10) Burner certification to the generator. Prior to submitting a notification to the State and Regional Directors, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

(i) Certifying that the excluded fuel will only be burned in an industrial furnace, industrial boiler, utility boiler, or hazardous waste incinerator, as required under paragraph (b)(3) of this section;

(ii) Identifying the name and address of the facility that will burn the excluded fuel; and

(iii) Certifying that the State in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this section.

(11) Ineligible waste codes. Wastes that are listed as hazardous waste because of the presence of dioxins or furans, as set out in Appendix VII of this Section, are not eligible for these exclusions, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to the full RCRA hazardous waste management requirements.

(12) Regulatory status of boiler residues. Burning excluded fuel that was otherwise a hazardous waste listed under §§ 261.31 through 261.33 does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

(13) Residues in containers and tank systems upon cessation of operations.

(i) Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to regulation under Sections 262 through 265, 267, 268, and 270 of this regulation.

(ii) Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33 when the exclusion was claimed.

(iii) Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under paragraphs (a)(1) or (a)(2) of this section are solid wastes subject to regulation as hazardous waste if:

(A) The waste exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24; or

(B) The fuel were otherwise a hazardous waste listed under §§ 261.31 through 261.33. The hazardous waste code for the listed waste applies to these liquid and accumulated solid resides.

(14) Waiver of RCRA Closure Requirements. Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under § 262.34 of this regulation, are not subject to the closure requirements of Sections 264, 265, and 267 provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this section, and that afterward will be used only to manage fuel excluded under this section.

(15) Spills and leaks.

(i) Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and must be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under §§ 261.21 through 261.24 or if the fuel were otherwise a hazardous waste listed in §§ 261.31 through 261.33.

(ii) For excluded fuel that would have otherwise been a hazardous waste listed in §§ 261.31 through 261.33 and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

(16) Nothing in this section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the Department of Transportation requirements for hazardous materials in 49 CFR parts 171 through 180.

(c) Failure to comply with the conditions of the exclusion. An excluded fuel loses its exclusion if any person managing the fuel fails to comply with the conditions of the exclusion under this section, and the material must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized State agency may take enforcement action under RCRA section 3008(a).

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Total Nitrogen as N	NA	9000	18400	4900	--
Total Halogen as Cl	NA	1000	18400	540	--
Total Organic Halogens as Cl	NA	--	--	(*)	--
Polychlorinated biphenyl, total [Arochlors, total]	1338-36-3	ND	--	ND	1.4
Cyanide, total	57-12-5	ND	--	ND	1
Metals					
Antimony, total	7440-36-0	ND	--	12	--
Arsenic, total	7440-38-2	ND	--	0.23	--
Barium, total	7440-39-3	ND	--	23	--
Beryllium, total	7440-41-7	ND	--	1.2	--
Cadmium, total	7440-43-9	ND	--	1.2	--
Chromium, total	7440-47-3	ND	--	2.3	--
Cobalt	7440-48-4	ND	--	4.6	--
Lead, total	7439-92-1	57	18100	31	--
Manganese	7439-96-5	ND	--	1.2	--
Mercury, total	7439-97-6	ND	--	0.25	--
Nickel, total	7440-02-0	106	18400	58	--
Selenium, total	7782-49-2	ND	--	0.23	--
Silver, total	7440-22-4	ND	--	2.3	--
Thallium, total	7440-28-0	ND	--	23	--
Hydrocarbons					
Benzo(a)anthracene	56-55-3	ND	--	2400	--
Benzene	71-43-2	8000	19600	4100	--
Benzo(b)fluoranthene	205-99-2	ND	--	2400	--
Benzo(k)fluoranthene	207-08-9	ND	--	2400	--
Benzo(a)pyrene	50-32-8	ND	--	2400	--
Chrysene	218-01-9	ND	--	2400	--
Dibenzo(a,h)anthracene	52-70-3	ND	--	2400	--
7,12-Dimethylbenz(a)anthracene	57-97-6	ND	--	2400	--
Fluoranthene	206-44-0	ND	--	2400	--
Indeno(1,2,3-cd)pyrene	193-39-5	ND	--	3400	--
3-Methylcholanthrene	56-49-5	ND	--	2400	--
Napthalene	91-20-3	6200	19400	3200	--
Toluene	108-88-3	69000	19400	36000	--
Oxygenates					
Acetophenone	98-86-1	ND	--	2400	--
Acrolein	107-02-8	ND	--	39	--
Allyl alcohol	107-18-6	ND	--	30	--
Bis(2-ethylhexyl)phthalate (Di-2-ethylhexyl phthalate)	117-81-7	ND	--	2400	--

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Butyl benzyl pthalate	85-68-7	ND	--	2400	--
o-Cresol (2-methyl phenol)	95-48-7	ND	--	2400	--
m-Cresol (3-methyl phenol)	108-39-4	ND	--	2400	--
p-Cresol (4-methyl phenol)	106-44-5	ND	--	2400	--
Di-n-butyl pthalate	84-74-2	ND	--	2400	--
Diethyl pthalate	84-66-2	ND	--	2400	--
2,4-Dimethylphenol	105-67-9	ND	--	2400	--
Dimethyl pthalate	117-8-0	ND	--	2400	--
Endothall	145-73-3	ND	--	100	--
Ethyl methacrylate	97-63-2	ND	--	39	--
2-Ethoxyethanol (Ethylene glycol monoethyl ether)	110-80-5	ND	--	100	--
Isobutyl alcohol	78-83-1	ND	--	39	--
Isosafrole	120-58-1	ND	--	2400	--
Methyl ethyl ketone (2-butanone)	78-93-3	ND	--	39	--
Methyl methacrylate	80-62-6	ND	--	39	--
1,4-Napthoquinone	13-15-4	ND	--	2400	--
Phenol	108-95-2	ND	--	2400	--
Propargyl alcohol (2-propyn-1-ol)	107-19-7	ND	--	30	--
Safrole	94-59-7	ND	--	2400	--
Sulfonated Organics					
Carbon disulfide	75-15-0	--	--	ND	39
Disulfoton	298-04-4	--	--	ND	2400
Ethyl methanesulfonate	62-50-0	--	--	ND	2400
Methyl methanesulfonate	66-27-3	--	--	ND	2400
Phorate	298-02-2	--	--	ND	2400
1,3-Propane sulfone	1120-71-4	--	--	ND	100
Tetraethyldithiopyrophosphate (Sulfotepp)	3689-24-5	--	--	ND	2400
Thiophenol (benzenethiol)	108-98-5	--	--	ND	30
O,O,O-Triethyl phosphorothioate	126-68-1	--	--	ND	2400
Nitrogenated Organics					
Acetonitrile (Methyl cyanide)	75-05-8	ND	--	ND	30
2-Acetylaminofluorene (2-AAF)	53-96-3	ND	--	ND	2400
Acrylonitrile	107-13-1	ND	--	ND	39
4-Aminibiphenyl	92-67-1	ND	--	ND	2400
4-Aminopyridene	504-24-5	ND	--	ND	100
Aniline	62-53-3	ND	--	ND	2400
Benzidine	92-67-5	ND	--	ND	2400
Dibenz[a,j]acridine	224-42-0	ND	--	ND	2400
O,O-Diethyl O-pyrazinyl phosphorothiate (Thionazin)	297-97-2	ND	--	ND	2400
Dimethoate	60-51-5	ND	--	ND	2400
p-(Dimethylamino) azobenzene [4-dimethylaminoazobenzene]	60-11-7	ND	--	ND	2400
3,3'-Dimethylbenzidine	119-93-7	ND	--	ND	2400
α,α-Dimethylphenethylamine	122-09-8	ND	--	ND	2400
3,3'-Dimethoxybenzidine	119-93-8	ND	--	ND	100
1,3-Dinitrobenzene (m-dinitrobenzene)	99-65-0	ND	--	ND	2400

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
4,6-Dinitro-o-cresol	534-52-1	ND	--	ND	2400
2,4-Dinitrophenol	51-28-5	ND	--	ND	2400
2,4-Dinitrotoluene	121-14-2	ND	--	ND	2400
2,6-Dinitrotoluene	605-20-2	ND	--	ND	2400
Dinoseb (2-sec-butyl-4,6-dinitrophenol)	88-85-7	ND	--	ND	2400
Diphenylamine	122-39-4	ND	--	ND	2400
Ethyl carbamate (Urethane)	51-79-6	ND	--	ND	100
Ethylenethiourea (2-imidazolidinethione)	96-45-7	ND	--	ND	110
Famphur	52-85-7	ND	--	ND	2400
Methacrylonitrile	126-98-7	ND	--	ND	39
Methapyrilene	91-80-5	ND	--	ND	2400
Methomyl	16752-77-5	ND	--	ND	57
2-Methyllactonitrile (acetone cyanohydrin)	75-86-5	ND	--	ND	100
Methyl parathion	298-00-0	ND	--	ND	2400
MNNG [N-methyl-N-nitroso-N'-nitroguanidine)	70-25-7	ND	--	ND	110
1-Napthylamine [α-napthylamine]	134-32-7	ND	--	ND	2400
2-Napthylamine [β-napthylamine]	91-59-8	ND	--	ND	2400
Nicotine	54-11-5	ND	--	ND	100
4-Nitroaniline (p-nitroaniline)	100-01-6	ND	--	ND	2400
Nitrobenzene	98-96-3	ND	--	ND	2400
p-Nitrophenol	100-02-7	ND	--	ND	2400
5-Nitro-o-toluidine	99-55-8	ND	--	ND	2400
N-Nitroso-di-n-butylamine	924-16-3	ND	--	ND	2400
N-Nitrosodiethylamine	55-18-5	ND	--	ND	2400
N-Nitrosodiphenylamine (diphenylnitrosamine)	86-30-6	ND	--	ND	2400
N-Nitroso-N-methylethylamine	10595-95-6	ND	--	ND	2400
N-Nitrosomorpholine	59-89-2	ND	--	ND	2400
N-Nitrosopiperidine	100-75-4	ND	--	ND	2400
N-Nitrosopyrrolidine	930-55-2	ND	--	ND	2400
2-Nitropropane	79-46-9	ND	--	ND	2400
Parathion	56-38-2	ND	--	ND	2400
Phenacetin	62-44-2	ND	--	ND	2400
1,4-Phenylene diamine (p-phenylenediamine)	106-50-3	ND	--	ND	2400
N-Phenylthiourea	103-85-5	ND	--	ND	57
2-Picoline (α-picoline)	109-06-8	ND	--	ND	2400
Propylthiouracil (6-propyl-2-thiouracil)	51-52-5	ND	--	ND	100
Pyridine	110-86-1	ND	--	ND	2400
Strychnine	57-24-9	ND	--	ND	100
Thioacetamide	62-55-5	ND	--	ND	57
Thiofanox	39196-18-4	ND	--	ND	100
Thiourea	62-56-6	ND	--	ND	57

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Toluene-2,4-diamine (2,4-diaminotoluene)	95-80-7	ND	--	ND	57
Toluene-2,6-diamine (2,6-diaminotoluene)	823-40-5	ND	--	ND	57
o-Toluidine	95-53-4	ND	--	ND	2400
p-Toluidine	106-49-0	ND	--	ND	100
1,3,5-Trinitrobenzene (sym-trinitrobenzene)	99-35-4	ND	--	ND	2400
Halogenated Organics					
Allyl chloride	107-05-1	ND	--	ND	2400
Aramite	140-57-8	ND	--	ND	2400
Benzal chloride (dichloromethyl benzene)	98-57-3	ND	--	ND	2400
Benzyl chloride	100-44-77	ND	--	ND	2400
bis(2-Chloroethyl) ether dichloroethyl ether)	111-44-4	ND	--	ND	39
Bromoform (tribromomethane)	75-25-2	ND	--	ND	39
Bromomethane (methyl bromide)	74-84-9	ND	--	ND	39
4-Bromophenyl phenyl ether (p-bromodiphenyl ether)	101-55-3	ND	--	ND	2400
Carbon tetrachloride	56-23-5	ND	--	ND	2400
Chlordane	57-75-9	ND	--	ND	2400
p-Chloroaniline	106-47-8	ND	--	ND	39
Chlorobenzene	108-90-7	ND	--	ND	39
Chlorobenzilate	510-15-6	ND	--	ND	39
p-Chloro-m-cresol	59-50-7	ND	--	ND	39
2-Chloroethyl vinyl ether	110-75-8	ND	--	ND	1.4
Chloroform	67-66-3	ND	--	ND	1.4
Chloromethane (methyl chloride)	74-87-3	ND	--	ND	1.4
2-Chloronapthalene (β-chloronapthalene)	91-58-7	ND	--	ND	1.4
2-Chlorophenol (o-chlorophenol)	95-57-8	ND	--	ND	1.4
Chloroprene (2-chloro-1,3-butadiene)	1126-99-8	ND	--	ND	30
2,4-D (2,4-dichlorophenoxyacetic acid)	94-75-7	ND	--	ND	39
Diallate	2303-16-4	ND	--	ND	100
1,2-Dibromo-3-chloropropane	96-12-8	ND	--	ND	1.4
1,2-Dichlorobenzene (o-dichlorobenzene)	95-50-1	ND	--	ND	2.8
1,3-Dichlorobenzene (m-dichlorobenzene)	541-73-1	ND	--	ND	2400
1,4-Dichlorobenzene (p-dichlorobenzene)	106-47-7	ND	--	ND	2400
3,3'-Dichlorobenzidine	91-94-1	ND	--	ND	2400
Dichlorodifluoromethane (CFC-12)	75-71-8	ND	--	ND	2400
1,2-Dichlorethane (ethylene dichloride)	107-06-2	ND	--	ND	59000
1,1-Dichloroethylene (vinylidene chloride)	75-35-4	ND	--	ND	2400
Dichloromethoxy ethane (bis(2-chlorethoxy) methane	111-91-1	ND	--	ND	2400

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
2,4-Dichlorophenol	120-83-2	ND	--	ND	4700
2,6-Dichlorophenol	87-65-0	ND	--	ND	1.4
1,2-Dichloropropane (propylene dichloride)	78-87-5	ND	--	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	--	ND	100
trans-1,3-Dichloropropylene	10061-02-6	ND	--	ND	39
1,3-Dichloro-2-propanol	96-23-1	ND	--	ND	2400
Endosulfan I	959-98-8	ND	--	ND	39
Endosulfan II	33213-65-9	ND	--	ND	2400
Endrin	72-20-8	ND	--	ND	2400
Endrin aldehyde	7421-93-4	ND	--	ND	2400
Endrin ketone	53494-70-5	ND	--	ND	30
Epichlorohydrin (1-chloro-2,3-epoxy propane	106-89-8	ND	--	ND	30
Ethylidene dichloride (1,1-dichloroethane)	75-34-3	ND	--	ND	2400
2-Fluoroacetamide	640-19-7	ND	--	ND	39
Heptachlor	76-44-8	ND	--	ND	39
Heptachlor epoxide	1024-57-3	ND	--	ND	2400
Hexachlorobenzene	118-74-1	ND	--	ND	2400
Hexachloro-1,3-butadiene (hexachlorobutadiene)	87-88-3	ND	--	ND	39
Hexachlorocyclopentadiene	77-47-4	ND	--	ND	39
Hexachloroethane	67-72-1	ND	--	ND	39
Hexachlorophene	70-30-4	ND	--	ND	39
Hexachloropropene (hexachloropropylene)	1888-71-7	ND	--	ND	2400
Isodrin	465-73-6	ND	--	ND	2400
Kepone (chlordecone)	143-50-0	ND	--	ND	39
Lindane (γ-BHC; γ-hexachlorocyclohexane)	58-89-9	ND	--	ND	39
Methylene chloride (dichloromethane)	75-09-2	ND	--	ND	--
4,4'-Methylenr-bis-(2-chloroaniline)	101-14-4	ND	--	ND	--
Methyl iodide (Iodomethane)	74-88-4	ND	--	ND	--
Pentachlorobenzene	608-93-5	ND	--	ND	--
Pentachloroethane	76-01-7	ND	--	ND	--
Pentachloronitrobenzene (PCNB, Quintobezene, Quintozene)	82-68-8	ND	--	ND	--
Pentachlorophenol	87-88-5	ND	--	ND	--
Pronamide	23950-58-5	ND	--	ND	--
Silvex (2,4,5-Trichlorophenoxypropionic acid)	93-72-1	ND	--	ND	--
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	1746-01-6	ND	--	ND	--

Table 1 to § 261.38 – Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS Number	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	--	ND	--
1,1,2,2-Tetrachloroethane	79-35-4	ND	--	ND	--
Tetrachloroethylene (perchloroethylene)	127-18-4	ND	--	ND	--
2,3,4,6-Tetrachlorophenol	58-90-2	ND	--	ND	--
1,2,4-Trichlorobenzene	120-82-1	ND	--	ND	--
1,1,1-Trichloroethane (methyl chloroform)	71-55-6	ND	--	ND	--
1,1,2-Trichlororoethane (vinyl trichloride)	79-00-5	ND	--	ND	--
Trichloroethylene	79-01-6	ND	--	ND	--
Trichlorofluoromethane (trichloromonfluoromethane)	75-69-4	ND	--	ND	--
2.4.5-Trichorophenol	95-95-4	ND	--	ND	--
2,4,6-Trichlorophenol	88-06-2	ND	--	ND	--
1,2,3-Trichloropropane	98-18-4	ND	--	ND	--
Vinyl chloride	75-01-4	ND	--	ND	--

Notes:
NA – Not Applicable
ND – Non-detect
(a) – 25 or individual halogenated organics listed below

5. **Appendix VIII to Section 261** is amended by removing the entries for "Saccharin" and "Saccharin salts" from the table "Hazardous Constituents."

6. **Section 262.21** is amended by revising paragraph (f)(4) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

* * * * *

(f) * * *

(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, or faxed, except that the marginal words indicating copy distribution must be ~~in red ink~~ printed with a distinct ink color or with another method (e.g., white text against black background in text box, or, black text against grey background in text box) that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

* * * * *

7. Amend **Section 262.200** to revise the definition of "central accumulation area" to read as follows:

§ 262.200 Definitions for this subsection.

* * * * *

"Central accumulation area" means an on-site hazardous waste accumulation area subject to either § 262.34(a)-(b) of this Section (large quantity generators) or § 262.34(d)-(f) of this Section (small quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to this subsection must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

* * * * *

8. Amend **Section 262.206** to revise paragraph (b)(3)(i), to read as follows:

§ 262.206 Labeling and management standards for containers of unwanted material in the laboratory.

* * * * *

(b) * * *

(3) * * *

(i) When adding, removing or ~~consolidating~~ bulking unwanted material, or

* * * * *

9. Amend **Section 262.212** to revise paragraph (e)(1), to read as follows:

§ 262.212 Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility.

* * * * *

(e) * * *

(1) Write the words "hazardous waste" on the container label that is affixed or attached to the container ~~(or on the label that is affixed or attached to the container, if that is preferred)~~ within 4 calendar days of arriving at the on-site interim status or permitted treatment, storage disposal facility and before the hazardous waste may be removed from the on-site interim status or permitted treatment, storage or disposal facility, and

* * * * *

10. Amend **Section 262.214** to revise paragraphs (a)(1) introductory text and (b)(1), to read as follows:

§ 262.214 Laboratory management plan.

(a) * * *

(1) Describe procedures for container labeling in accordance with § 262.206(a), ~~as follows~~ including:

* * * * *

(b) * * *

(1) Describe its intended best practices for container labeling and management, ~~including how the eligible academic entity will manage containers used for in-line collection of unwanted materials, such as with high performance liquid chromatographs and other laboratory equipment (see the required standards at §262.206)~~ (see the required standards at § 262.206).

* * * * *

11. **Section 264.16** is amended to add new paragraph (a)(4) to read as follows:

§ 264.16 Personnel training.

(a) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

12. **Section 264.195** is revised to read as follows:

§ 264.195 Inspections.

(a) * * * * *

~~(b) The owner or operator must inspect at least once each operating day:~~

~~(1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;~~

~~(2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and~~

~~(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).~~

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

[Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]

~~(c) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:~~

~~(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and~~

~~(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).~~

~~(d) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.~~

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) (Reserved)

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

(g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

[Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)--Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(b) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

13. **Section 264.251(c)** is revised to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile unit ~~on which construction commences after January 29, 1992~~, each lateral expansion of a waste pile unit ~~on which construction commences after July 29, 1992~~, and each replacement of an existing waste pile unit ~~that is to commence reuse after July 29, 1992~~ must install two or more liners and a leachate collection and removal system above and between such liners. ~~"Construction commences" is as defined in § 260.10 under "existing facility".~~

* * * * *

14. **Section 264.301** is revised to read as follows:

§ 264.301 Design and operating requirements.

****

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Director for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.24 of this regulation, with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ § 270.2 of this regulation); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA 3005(c); or

15. **Section 264.314** is revised to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) ~~The following materials shall not be disposed of in landfills permitted under this Regulation and Regulation:~~

~~(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.~~

~~(2) Containers holding free liquids unless all freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.~~

~~(3) Municipal refuse which is not hazardous waste.~~

~~(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement like material.~~

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

~~(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Before disposal, liquid waste or waste containing free liquids must be treated or stabilized, (e.g. by mixing with a sorbent solid so that free liquids are no longer present and the waste meets the requirements of (a)(1) or (2) above).~~

~~(c)~~ (b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 260.11 of this regulation.

~~(d)~~(c) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid:

(i) Has been removed by decanting, or other methods;

(ii) Has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) Has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 264.316 and is disposed of in accordance with § 264.316.

~~(e)~~**(d)** Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph (d)(1) of this section; materials that pass one of the tests in paragraph (d)(2) of this section; or materials that are determined by EPA to be nonbiodegradable through the Section 260 petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon); or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method 21-70 (1984a) — Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b) — Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: CO_2 Evolution (Modified Sturm Test)].

~~(f)~~ **(e)** The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in ~~40 CFR 144.3~~ **§ 270.2 of this regulation.**.)

16. **Section 264.552** is revised to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

* * * * *

(e) * * * * *

(4) * * * * *

(iv) * * * * *

* * * * *

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Director may specify a leaching test other than the TCLP (SW-846 Method 1311, ~~40 CFR 144.3~~ **§ 260.11(a)(11)**) to measure treatment effectiveness, provided the Director determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

17. **Section 264.1030(c)** is revised to read as follows:

§ 264.1030 Applicability.

* * * * *

(c) For the owner and operator of a facility subject to this subsection and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subsection shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of § 270.50 **(d)**. **Until such date when the owner and operator receive a final permit incorporating the requirements of this subsection, the owner and operator are subject to the requirements of Section 265, Subsection AA of this regulation.**

18. **Section 265.1(c)(4)** is amended to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c)

* * * *

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under subpart A or B of 40 CFR part 271, except that the requirements of this section will continue to apply:

(i) If the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under subpart A or B of 40 CFR part 271 if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in 40 CFR 271.1(i);

19. **Section 265.142** is revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111 through 265.115 and applicable closure requirements in §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102.

20. **Section 268.7(b)(3)(ii)** is amended by amending the first entry in the Table:

Treatment Facility Paperwork Requirements Table	
Required information	**§ 268.7(b)**
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment.	√
2. The waste is subject to the LDRs. The constituents concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice.	√
3. The notice must include the applicable wastewater/nonwastewater category (see §§ 268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide	√
4. Waste analysis data (when available)	√
5. For contaminated soil subject to LDRs as provided in § 268.49(a), the constituents subject to treatment as described in § 268.49(d) and the following statement, "this contaminated soil [does/does not] exhibit a characteristic of hazardous waste and [is subject to/ complies with] the soil	√

treatment standards as provided by § 268.49(c)"	
6. A certification is needed (see applicable section exact wording).	√

21. **Section 268.40** is amended by removing the entry for waste code U202 from the table "Treatment Standards for Hazardous Wastes."

22. **Section 268.40, the Table of Treatment Standards** in paragraph (b) is amended by revising the entries for "K156", "K157", "K158", "K159", "K161", "P127", "P128", "P185", "P188", "P189", "P190", "P191", "P192", "P194", "P196", "P197", "P198", "P199", "P201", "P202", "P203", "P204", "P205", "U271", "U278", "U279", "U280", "U364", "U367", "U372", "U373", "U387", "U389", "U394", "U395", "U404", "U409", "U410", and "U411" to read as follows:

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES				*NOTE: NA means not applicable*	
Waste Code	**Waste Description & 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[3] in mg/kg unless noted as "mg/L TCLP"; or Technology Code[4]**
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[12]	17804-35-2	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Benzene	71-43-2	0.14	10
		Carbaryl[12]	63-25-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
		Carbenzadim[12]	10605-21-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Carbofuran[12]	1563-66-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
		Carbosulfan[12]	55285-14-8	0.028; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES *NOTE: NA means not applicable*

Waste Code	Waste Description & 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[3] in mg/kg unless noted as "mg/L TCLP"; or Technology Code[4]
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl[12]	16752-77-5	0.028; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
		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[12]	121-44-8	0.081; or CMBST, CHOXD, BIODG, or CARBN	1.5; or CMBST
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[12]	16752-77-5	0.028; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
		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[12]	121-44-8	0.081; or CMBST, CHOXD, BIODG, or CARBN	1.5; or CMBST
K158	Bag house dusts and filter/separation solids 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]	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim[12]	10605-21-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Carbofuran[12]	1563-66-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES *NOTE: NA means not applicable*

Waste Code	Waste Description & 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[3] in mg/kg unless noted as "mg/L TCLP"; or Technology Code[4]
		Carbosulfan[12]	55285-14-8	0.028; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes.[10]	Benzene	71-43-2	0.14	10
		Butylate[12]	2008-41-5	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		EPTC (Eptam)[12]	759-94-4	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Molinate[12]	2212-67-1	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Pebulate[12]	1114-71-2	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
		Vernolate[12]	1929-77-7	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.[10]	Antimony	7440-36-0	1.9	1.15 mg/L TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/L TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/L TCLP
		Dithiocarbamates (total)[12]	NA	0.028; or CMBST, CHOXD, BIODG, or CARBN	28; or CMBST
		Lead	7439-92-1	0.69	0.75 mg/L TCLP
		Nickel	7440-02-0	3.98	11 mg/L TCLP
		Selenium	7782-49-2	0.82	5.7 mg/L TCLP
P127	Carbofuran	Carbofuran[12]	1563-66-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES				*NOTE: NA means not applicable*	
Waste Code	Waste Description & 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[3] in mg/kg unless noted as "mg/L TCLP"; or Technology Code[4]
P128	Mexacarbate	Mexacarbate[10]	315-18-4	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P185	Tirpate [10]	Tirpate[10]	26419-73-8	0.056; or CMBST, CHOXD, BIODG, or CARBN	0.28; or CMBST
P188	Physostigmine salicylate	Physostigmine salicylate[10]	57-64-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P189	Carbosulfan	Carbosulfan[10]	55285-14-8	0.028; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P190	Metolcarb	Metolcarb[10]	1129-41-5	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P191	Dimetilan [10]	Dimetilan[10]	644-64-4	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P192	Isolan [10]	Isolan[10]	119-38-0	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P194	Oxamyl	Oxamyl[10]	23135-22-0	0.056; or CMBST, CHOXD, BIODG, or CARBN	0.028; or CMBST
P196	Manganese dimethyldithiocarbamate	Dithiocarbamates (total)[10]	NA	0.028; or CMBST, CHOXD, BIODG, or CARBN	0.28; or CMBST
P197	Formparanate [10]	Formparanate[10]	17702-57-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P198	Formetanate hydrochloride	Formetanate hydrochloride[10]	23422-53-9	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P199	Methiocarb	Methiocarb[10]	2032-65-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P201	Promecarb	Promecarb[10]	2631-37-0	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate[10]	64-00-6	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P203	Aldicarb sulfone	Aldicarb sulfone[10]	1646-	0.056; or CMBST,	0.28; or CMBST

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES				*NOTE: NA means not applicable*	
Waste Code	Waste Description & 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[3] in mg/kg unless noted as "mg/L TCLP"; or Technology Code[4]
			88-4	CHOXD, BIODG, or CARBN	
P204	Physostigmine	Physostigmine[10]	57-47-6	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P205	Ziram	Dithiocarbamates (total)[10]	NA	0.028; or CMBST, CHOXD, BIODG, or CARBN	28; or CMBST
[redacted]					
U271	Benomyl	Benomyl[10]	17804-35-2	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U278	Bendiocarb	Bendiocarb[10]	22781-23-3	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U279	Carbaryl	Carbaryl[10]	63-25-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
U280	Barban	Barban[10]	101-27-9	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
[redacted]					
U364	Bendiocarb phenol [10]	Bendiocarb phenol[10]	22961-82-6	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U367	Carbofuran phenol	Carbofuran phenol[10]	1563-38-8	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U372	Carbendazim	Carbendazim[10]	10605-21-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U373	Propham	Propham[10]	122-42-9	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U387	Prosulfocarb	Prosulfocarb[10]	52888-80-9	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U389	Triallate	Triallate[10]	2303-17-5	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U394	A2213 [10]	A2213[10]	30558-43-1	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U395	Diethylene glycol, dicarbamate [10]	Diethylene glycol,	5952-	0.056; or CMBST,	1.4; or CMBST

§268.40 TABLE TTS – TREATMENT STANDARDS FOR HAZARDOUS WASTES *NOTE: NA means not applicable*

Waste Code	Waste Description & 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]
		dicarbamate[18]	26-1	CHOXD, BIODG, or CARBN	
U404	Triethylamine	Triethylamine[18]	101-44-8	0.081; or CMBST, CHOXD, BIODG, or CARBN	1.5; or CMBST
U409	Thiophanate-methyl	Thiophanate-methyl[18]	23564-05-8	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U410	Thiodicarb	Thiodicarb[18]	59669-26-0	0.019; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U411	Propoxur	Propoxur[18]	114-26-1	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST

FOOTNOTES TO TREATMENT STANDARD TABLE 268.40

1	The waste descriptions provided in this table do not replace waste descriptions in Section 261 of this regulation. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.
2	CAS means *Chemical Abstract Services*. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
3	Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.
4	All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in § 268.42 Table 1 - Technology Codes and Descriptions of Technology-Based Standards.
5	Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the non-wastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Section 264, Subsection O or Section 265, Subsection O of this regulation, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in § 268.40(d) of this regulation. All concentration standards for non-wastewaters are based on analysis of grab samples.
10	The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Section, for non-wastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Section, for wastewaters.

23. At **Section 268.48, Table UTS – Universal Treatment Standards**, is amended by

a. Removing the entries for Aldicarb sulfone, Barban, Bendiocarb, Benomyl, Butylate, Carbaryl, Carbenzadim, Carbofuran, Carbofuran phenol, Carbosulfan, m-Cumenyl methylcarbamate, Dithiocarbamates (total), EPTC (Eptam), Formetanate hydrochloride, Methiocarb, Methomyl, Metolcarb, Mexacarbate, Molinate, Oxamyl,

Pebulate, Physostigmine, Physostigmine salicylate, Promecarb, Propham, Propoxur, Prosulfocarb, Thiodicarb, Thiophanate-methyl, Triallate, Triethylamin, and Vemolate; and

b. Removing and reserving footnote 6.

24. **Appendix VII to Section 268** is amended by removing the entry for waste code U202 from Table 1, "Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs – Comprehensive List."

25. **Section 273.34(d)** is revised to read as follows:

(d)**(1)** Mercury-containing devices (i.e., each device), or a container in which the mercury-containing device is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Containing Device(s)," "Waste Mercury-Containing Devices," or "Used Mercury-Containing Devices."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

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,

_____

Clyde E. Rhodes, Jr.
Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality
(501) 682-0831

ARKANSAS POLLUTION
CONTROL AND ECOLOGY
COMMISSION

PETITION TO INITIATE
RULEMAKING

Regulation No. 23
Docket No. 12-001-R

MINUTE ORDER NO. 12 - 02

On January 13, 2012, 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. 12-001-R.

The Commission's Regulations Committee met on January 27, 2012 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 March 8, 2012, 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.

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 June 2012 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.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 12-001-R effective January 27, 2012. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

	J. Bates		D. Samples
	L. Bengal		L. Sickel
	J. Chamberlain		J. Simpson
	L. Hitchcock		W. Thompson
	D. Hendrix		B. White
	S. Jorgensen		R. Young
	J. Shannon		

SUBMITTED BY: C. Rhodes **DATE PASSED:** 1/27/2012

J. Chamberlin, Chair

NOTICE OF PROPOSED REGULATION CHANGE, PUBLIC HEARING

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at North Little Rock March 8, 2012, to receive comments on proposed revisions to APC&EC Regulation 23 (Hazardous Waste Code). The hearing will begin at 2:00 p.m. in the Commission Room at the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118. The deadline for submitting written comments on the regulation is 4:30 p.m. March 22, 2012.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

APC&EC authority for revising Regulation 23 is found in the Arkansas Code, Annotated, Section 8-7-201, et seq.

Proposed revisions to Regulation 23 include incorporation of changes to federal hazardous waste regulations which were published in the Federal Register between June 10, 2010, and December 31, 2011. Proposed federal-related changes include:

- Withdrawal of the Emission Comparable Fuel Exclusion
- Removal of saccharin and its salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances
- Technical corrections to the Standards Applicable to Generator 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
- Revision of the treatment standards for carbamate wastes
- Amendment to the printing specifications for hazardous waste manifests
- Miscellaneous technical corrections to various sections of the code to provide clarification, correct text errors, update sections with new information, and make other relatively minor changes.

A complete listing of the proposed changes to Regulation 23 can be found on the Drafts of Proposed Regulations page of the ADEQ's Internet web site at www.state.ar.us.

Copies of the proposed changes to Regulation 23 are available for public inspection during regular business hours at the ADEQ's Public Outreach and Assistance (POA) Division on the second floor of the ADEQ headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118, or at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; or in the Arkansas State Library, 900 West Capitol, Suite 100, Little Rock.

Oral and written comments will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. March 22, 2012. Written comments should be delivered or mailed to: Doug Szenher, public information coordinator, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: reg-comment@adeq.state.ar.us.

Published February 1 and 2, 2012,

Teresa Marks, Director,
Arkansas Department of Environmental Quality