

DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY

SUBJECT: APC&EC Rule No. 23

DESCRIPTION: The proposed changes to APC&EC Rule No. 23 incorporate federal rules to maintain Arkansas's equivalency and to maintain our authorization for the Hazardous Waste Program. Changes also incorporate state government transformation, as well as Act 315 of 2019, which eliminated unnecessary references to regulations and provided for consistent references to rules throughout the Arkansas Code.

The timely adoption of these proposed changes is supported by the Arkansas regulated community.

The Federal Rules being adopted with this rulemaking and a brief description of each include:

Revised Definition of Solid Waste

- Revised the rules to encourage recycling hazardous waste and improve accountability and oversight of recycling while allowing flexibilities.
 - Three (3) conditional exclusions:
 - Generator Controlled Exclusion
 - Recycling can occur on-site or off-site as long as it is by the same "person"
 - Transfer-Based Exclusion
 - Hazardous waste may be transferred to an off-site third-party reclamation facility
 - Remanufacturing Exclusion
 - Allows the transfer of certain spent solvents from one manufacturer to another for "remanufacturing"
 - Only available to the pharmaceutical, organic chemical, plastics and resins, and/or paints and coatings industries
 - Codified the definition of legitimate recycling (distinguishes between real recycling and sham recycling)
 - Reclamation must be legitimate: 3 Factors are mandatory and 1 Factor must be considered
 - Must provide a useful contribution (mandatory)
 - Must produce a valuable product or intermediate (mandatory)
 - Must be managed as a valuable product (mandatory)
 - The final product should not contain significant concentrations of hazardous constituents that aren't found in analogous products (must be considered)

Generator Improvements Rule

- Revises the hazardous waste generator regulations by making them easier to understand and provides greater flexibility in how hazardous waste is managed
 - Primary objective of the rule is to consolidate most of the generator requirements into Section 262 and to reduce cross-references
 - The rule directly responds to feedback EPA received from the regulated community, states, communities, and other stakeholders
 - Reorganizes, consolidates, and explains requirements in greater detail
 - Clarifies and incorporates guidance, notices, and policies

e-Manifest User Fee Rule

- Establishes the method EPA will use to determine user fees to the electronic and paper manifests submitted to the national e-Manifest system
- ADEQ must adopt the User Fee Rule to maintain equivalency, but will not be authorized; EPA will retain enforcement authority

Import/Export Rule

- EPA published the regulations governing imports and exports of hazardous waste and certain other materials in order to strengthen public accessibility and transparency of import and export related documentation
 - Provides that no Confidential Business Information (CBI) claims may be asserted by any person with respect to documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs)
 - EPA does not authorize States to administer the Federal import/export provisions of the hazardous waste regulations
- ADEQ must adopt this rule to maintain equivalency with the Federal program, but will not be authorized

Coal Combustion Residuals (CCR) for exclusion from hazardous waste

- Expands the current exclusion in APC&EC Rule No. 23, Section 261.4(b)(4) to include specific waste streams associated with combustion of coal or other fossil fuels

PUBLIC COMMENT: A public hearing was held on July 20, 2020. The public comment period expired on August 3, 2020. No comments were received.

The proposed effective date is November 10, 2020.

FINANCIAL IMPACT: The agency states that the amended rule has no financial impact. However, the agency estimates that the cost to implement the federal regulation is \$811,874.00 in federal funds for the current fiscal year and \$776,794.00 in federal funds for the next fiscal year.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 8-7-209(b)(1), the Arkansas Pollution Control and Ecology Commission has the power and duty to

adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of the Arkansas Hazardous Waste Management Act of 1979 (“Act”), Ark. Code Ann. §§ 8-7-201 through 8-7-227, and the powers and duties of the Division of Environmental Quality under the Act, including, but not limited to, rules for: the containerization and labeling of hazardous waste, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, the State Highway Commission, and the Arkansas Department of Transportation; establishing standards and procedures for the safe operation and maintenance of facilities; identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or treatment of incompatible wastes together; the reporting of hazardous waste management activities; establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest.

The agency states that the rule is required to comply with federal regulations, specifically, 40 C.F.R. Parts 260-279.

**QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Energy and Environment
DIVISION Office of Land Resources
DIVISION DIRECTOR Jarrold Zweifel
CONTACT PERSON David Witherow
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. (501) 682-0867 FAX NO. (501) 682-0565 E-MAIL witherow@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING David Witherow
PRESENTER E-MAIL witherow@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
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? APC&EC Rule No. 23

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 No

If yes, please provide the federal rule, regulation, and/or statute citation.
40 C.F.R. Parts 260-279

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

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

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

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

Does this repeal an existing rule? Yes No 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 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."

To adopt newly-revised federal rules published between January 13, 2015, and January 3, 2018; to propose changes to existing Rules; to correct errors in the Rule in order to conform with the Federal regulations; to correct inconsistencies in the Rule pertaining to previously adopted federal rules; and to make stylistic corrections. These revisions are necessary to keep the state hazardous waste Rules current with the corresponding federal requirements.

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

Ark. Code Ann. §§ 8-7-209(b)(1)

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

The Division of Environmental Quality proposes this rule making before the Arkansas Pollution Control and Ecology Commission to Rule No. 23 (Hazardous Waste Management) in order to adopt Federal revisions to the hazardous waste management rules and to make technical and language corrections. The Commission's authority for amending Rule No. 23 is found in Arkansas Code Annotated § 8-7-209(b)(1).

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).

https://www.adeg.state.ar.us/regs/draft_regs.aspx

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

Date: July 20, 2020

Time: 2:00 p.m.

Place: Commission Room, DEQ Headquarters, 5301 Northshore Drive, North Little Rock, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

Ten business days from the date of the public hearing, which will be on or about August 3, 2020.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

November 10, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. N/A

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). N/A

14. 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.

Arkansas Environmental Federation

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Energy and Environment
DIVISION Office of Land Resources
PERSON COMPLETING THIS STATEMENT Terry Sligh
TELEPHONE NO. (501) 682-0867 **FAX NO.** (501) 682-0565 **EMAIL:** terry@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE APC&EC Rule No. 23

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

a) How the additional benefits of the more costly rule justify its additional cost;

b) The reason for adoption of the more costly rule;

c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue \$ 0.00 _____	General Revenue \$ 0.00 _____
Federal Funds \$ 811,874.00 _____	Federal Funds \$ 776,794.00 _____
Cash Funds \$ 0.00 _____	Cash Funds \$ 0.00 _____
Special Revenue \$ 0.00 _____	Special Revenue \$ 0.00 _____
Other (Identify) \$ 0.00 _____	Other (Identify) \$ 0.00 _____
 Total \$ 811,874.00 _____	 Total \$ 776,794.00 _____

b) What is the additional cost of the state rule?

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
General Revenue \$ 0.00 _____	General Revenue \$ 0.00 _____
Federal Funds \$ 0.00 _____	Federal Funds \$ 0.00 _____
Cash Funds \$ 0.00 _____	Cash Funds \$ 0.00 _____
Special Revenue \$ 0.00 _____	Special Revenue \$ 0.00 _____
Other (Identify) \$ 0.00 _____	Other (Identify) \$ 0.00 _____
 Total \$ 0.00 _____	 Total \$ 0.00 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 0 _____	\$ 0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ 0 _____	\$ 0 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Executive Summary

For proposed changes to APC&EC Rule No. 23

Introduction:

The proposed changes to APC&EC Rule No. 23 incorporate Federal rules to maintain Arkansas' equivalency and to maintain our authorization for the Hazardous Waste Program. Changes also incorporate State government transformation as well as Act 315.

The timely adoption of these proposed changes is supported by the Arkansas regulated community.

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Division of Environmental Quality

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