

# ATTACHMENT 1

# ARKANSAS RCRA STATUTORY CHECKLIST

## TABLE OF CONTENTS

	Page
I. DEFINITIONS.....	1
II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR 271.9] .....	3
III. STANDARDS FOR GENERATORS [See 40 CFR 271.10] .....	4
IV. STANDARDS FOR TRANSPORTERS [See 40 CFR 271.11] .....	7
V. STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12] .....	8
VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR 271.25] .....	21
VII. PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR 271.13 and 271.14] .....	22
VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14] .....	33
IX. REQUIREMENTS FOR USED OIL MANAGEMENT [See 40 CFR 271.26] .....	36
X. INSPECTIONS [See 40 CFR 271.15] .....	36
XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT) [See 40 CFR 271.16].....	37
XII. SHARING OF INFORMATION WITH EPA [See 40 CFR 271.17].....	39
XIII. EXPOSURE ASSESSMENTS .....	40
XIV. RADIOACTIVE MIXED WASTE .....	40
XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17] .....	41
XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES .....	42

## ARKANSAS RCRA STATUTORY CHECKLIST

Title of Legislation	Date Enacted
<b>Arkansas Hazardous Waste Management Act</b> (Act 406 of 1979, as amended, codified at Arkansas Code of 1987, Annotated, §§ 8-7-201 thru 8-7-226)	March 14, 1979
<b>Arkansas Resource Reclamation Act</b> (Act 1098 of 1979, as amended, codified at Ark. Code, Ann. §§ 8-7-301 thru 8-7-309)	April 19, 1979
<b>Arkansas Remedial Action Trust Fund Act</b> (Act 479 of 1985, as amended, codified at Ark. Code Ann. §§ 8-7-501 thru 8-7-523)	March 21, 1985
<b>Arkansas Water and Air Pollution Control Act</b> , (Act 472 of 1949, as amended, codified at Ark. Code, Ann. §§ 8-4-101 et seq.)	March 29, 1949
<b>Arkansas Solid Waste Management Act</b> (Act 237 of 1971, as amended, codified at Ark. Code, Ann. §§ 8-6-101 et seq.)	March 9, 1971
<b>General Provisions, Title 8 (Environmental Law), Arkansas Code, Annotated, of 1987</b> , codified at Ark. Code, Ann. §§ 8-1-101 thru 8-1-312)	Various dates

Date Prepared:           July 21, 2006          

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite
<b>I. DEFINITIONS</b>				
<i>Note that 40 CFR Part 271 does not specifically address definitions of terms. However, the Federal program relies on various definitions for establishing the applicability and scope of <u>the hazardous waste</u> regulations. If definitions of these terms appear in state statutes, they should be at least as stringent as the analogous Federal statutory or regulatory definition. The State should have the authority to define the following terms in a manner at least as stringent as the Federal program:</i>				
Disposal	N/A	§ 1004(3)	Non-HSWA	A.C.A. § 8-7-203(4)
Generator	N/A	Not in RCRA; see 40 CFR 260.10	Non-HSWA	<i>Not defined in statutes. See APC&amp;EC Regulation No. 23, § 260.10. "Generator".</i>
Hazardous waste	N/A	§ 1004(5)	Non-HSWA	A.C.A. § 8-7-203(7)
Manifest	N/A	§ 1004(12)	Non-HSWA	A.C.A. § 8-7-203(9)
Person	N/A	§ 1004(15)	Non-HSWA	A.C.A. § 8-7-203(10)
Storage	N/A	§ 1004(33)	Non-HSWA	A.C.A. § 8-7-203(12)
Transport	N/A	Not in	Non-HSWA	A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

		RCRA; see 260.10 definition for <i>transportation</i>		203(13)
Treatment	N/A	§ 1004(34)	Non-HSWA	A.C.A. § 8-7-203(14)
Treatment, Storage or Disposal facility	N/A	Not in RCRA; see 40 CFR 260.10 definition for <i>facility</i>	Non-HSWA	A.C.A. § 8-7-203(15)
Waste (solid)	N/A	§ 1004(27)	Non-HSWA	A.C.A. § 8-6-203(6)

**Remarks of the Independent Counsel:**

A.C.A. § 8-7-209(b)(1) provides the Arkansas Pollution Control and Ecology Commission (hereafter the Commission) with broad authority to promulgate, modify, and repeal rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and the intent of the State's Hazardous Waste Management Act. As per A.C.A. § 8-7-202 the purposes of this act include (1) establishing a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; (2) protecting the public health and safety, the health of living organisms, and the environment from the effects of improper, inadequate or unsound management of hazardous wastes; and (3) assuring the safe and adequate management of hazardous wastes in Arkansas.

At A.C.A. § 8-7-203, terms are defined which are used in the Hazardous Waste Management Act. The terms found at §§ 8-7-203(4)-(13) have a direct analog either at 40 CFR 260.10 or at RCRA § 1004. These terms are consistent with their Federal counterpart. At A.C.A. §§ 8-7-203(1)-(3), (14) and (15), terms are defined that either relate to terms specific to Arkansas' program (e.g., Department, Director, Commission) or are not directly defined in the Federal provisions, but are used within the text (e.g., treatment facility, site). Both sets of terms are consistent with the intent and meaning of the Federal provisions. The Federal regulations at 40 CFR 260.10 and 260.11 have been adopted verbatim at Reg. No. 23 §§ 260.10 and 260.11. State requirements are equivalent to those of the federal program, except for the following:

1. In the definition of "Existing hazardous waste management (HWM) facility", the deadline for the operation or construction of a facility to be included in this definition is 20 months earlier than the date set in the Federal regulations. Thus, more facilities are subject to the more stringent requirements for new facilities than is the case under the Federal requirements.
2. Arkansas includes definitions for the following terms not found in 40 CFR 260.10: "permit", "permitted site", "shipper", "site", "transport", "treatment facility" and "ultimate controlling person". With the exception of "permit" and "site", the State's definitions serve to clarify the use of these terms and do not affect stringency or the scope of the State's program. "Permit" and "site" are terms defined in 40 CFR 270.2. However, Arkansas has revised its definition of "permit" to include the State's transporter permit, and its definition of "site" has been revised to be consistent with the

## ARKANSAS RCRA STATUTORY CHECKLIST

State's definition of "existing hazardous waste management facility".				
<b>II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR 271.9]</b>				
<b>The State needs the authority to:</b>				
1. Adopt a set of characteristics for identifying hazardous wastes	271.9(a)	§ 3001	Both	A.C.A. § 8-7-209(a)(4)
2. Adopt a list of hazardous wastes	271.9(a)	§ 3001(b)&(e)	Both	A.C.A. § 8-7-209(a)(4)
3. <b>Optional:</b> Adopt modified regulations for the generation, transportation, treatment, storage and disposal of hazardous waste produced by generators that generate less than 1000 kg/month	271.9(a)	§ 3001(d)	HSWA	A.C.A. § 8-7-209(a)(3); § 8-7-209(a)(5); § 8-7-209(b)1); § 8-7-215 <i>(No quantity exclusions in State statutes)</i>
4. <b>Optional:</b> Exclude from regulation certain activities related to household waste	271.9(a)	§ 3001(i)	HSWA	A.C.A. § 8-7-209(a)(3);
5. Regulate listed or identified wastes which pass through a sewer system to a publicly owned treatment works (POTW) as necessary to adequately protect human health and environment	271.9(a)	§ 3018(b)	HSWA	A.C. A. § 8-7-209(a)(3); § 8-7-209(a)(5)
6. <b>Optional:</b> Provide a delisting mechanism with regulations that are equivalent to 40 CFR 260.20(b) and 260.22	271.9(b)	§ 3001(b)	Non-HSWA	No statutory provisions for delisting.
7. <b>Required if a State has a delisting mechanism:</b> Consider factors (including additional constituents) other than those for which the waste was listed, if the State has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste	271.9(b)	§ 3001(f)(1)	HSWA	No statutory provisions for delisting.
8. <b>Required if a State has a delisting mechanism:</b> Prohibit new temporary delistings without prior notice and	271.9(b)	§ 3001(f)(2)	HSWA	No statutory provisions for delisting.

## ARKANSAS RCRA STATUTORY CHECKLIST

comment, absent good cause, and require that prior temporary delistings lapse if not made final by November 8, 1986				
<p><b><u>Remarks of the Independent Counsel:</u></b></p> <p>A.C.A. § 8-7-209(a)(4) gives the Arkansas Department of Environmental Quality (hereafter the Department) broad authority to establish criteria for determining whether any waste or combination of wastes is hazardous for the purposes of the Arkansas Hazardous Waste Management Act and to identify and specify wastes or combination of wastes as being hazardous. A.C.A. § 8-7-202 outlines the purpose of the Hazardous Waste Management Act and the Policy of the State, and assures that the criteria established and the waste listings will protect the environment and will be consistent with the Federal requirements. In particular, A.C.A. §§ 8-7-202(3) &amp; (4) require assurance of the safe and adequate management of hazardous wastes within Arkansas and qualification of the Commission to adopt and the Department to administer, and enforce a hazardous program pursuant to the Resource Conservation and Recovery Act of 1976, as amended.</p> <p>Introductory language at A.C.A. § 8-7-209(b)(1) provides the Commission with the general authority to adopt regulations that are necessary to implement the purposes of the Arkansas Hazardous Waste Management Act. The purposes and policies of this act, outlined at § 8-7-202, assure that these regulations will be consistent with the Federal requirements. Finally, A.C.A. § 8-7-211 provides the Commission with the authority to grant a variance, waiver, or extension to the same extent that such variance, waiver or extension would be allowable under the Resource Conservation and Recovery Act of 1979 as amended.</p> <p>Arkansas is not seeking authorization for a delisting program. To delist a waste in Arkansas, an applicant must first complete the process to obtain a final delisting decision from the EPA Administrator. Once a final federal delisting decision has been published in the <i>Federal Register</i>, it is not effective in Arkansas until the Arkansas Pollution Control and Ecology Commission completes rulemaking to approve and incorporate the federal decision in Regulation No. 23.</p>				
<b>III. STANDARDS FOR GENERATORS [See 40 CFR §271.10]</b>				
<b>The State needs the authority to:</b>				
1. Regulate all generators EPA regulates under 40 CFR Part 262	271.10	§ 3001 and § 3002	Both	A.C.A. § 8-7-202; A.C.A. § 8-7-208; A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(b)(1) introductory paragraph; A.C.A. § 8-7-209(b)(1)(A), (C), (D), and (F); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(10)
2. Require use of I.D. numbers	271.10(a)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-208; A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(b)(1) introductory paragraph; A.C.A. § 8-7-209(b)(1)(D), and (F)
3. Adopt waste determination requirements	271.10(a)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(4);
4. Adopt recordkeeping requirements	271.10(b)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1) A.C.A. § 8-7-209(b)(1)(D) and (F)
5. Adopt reporting requirements	271.10(b)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(D)
6. Require generators to submit reports and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes generated	271.10(b)	§ 3002(a)(6) (C)&(D) § 3002(b)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(D);
7. Regulate accumulation of hazardous waste for short periods of time including use of appropriate containers	271.10(c)	§ 3002(a)	Both	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)
8. Adopt packaging, labeling, marking and placarding standards that are consistent with DOT regulations	271.10(d)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(A)
9. Regulate international shipments	271.10(e)	§ 3002(a) and § 3017	Both	A.C.A. § 8-7-209(b)(1)
10. Require the furnishing of information	271.10(f)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

regarding hazardous waste to transporters, and TSD facilities				209(b)(1)
11. Require the use of manifest system consistent with DOT and EPA requirements	271.10(f) and (h)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(A) and (F)
12. Investigate interstate shipments for which the manifest has not been returned	271.10(g)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(F)
13. Require actions to assure that all hazardous waste is designated for treatment, storage, or disposal in permitted facilities	271.10(f)	§ 3002(a)	Non-HSWA	A.C.A. § 8-7-209(a)(3); A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-215

### **Remarks of the Independent Counsel:**

A.C.A. § 8-7-202 addresses the purposes of the Arkansas Hazardous Waste Management Act. In particular § 8-7-202(2) states the purpose to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste. A.C.A. § 8-7-209(b)(1) gives the Commission the general authority to adopt and promulgate rules and regulations to implement and effectuate the purposes and intent of the Act. A.C.A. § 8-7-209(b)(1)(A) specifically addresses authority relative to containerization and labeling of hazardous waste. A.C.A. § 8-7-209(b)(1)(C) addresses authority to establish rules and regulations relative to incompatible wastes. A.C.A. § 8-7-209(b)(1)(D) gives specific authority for rulemaking relative to the reporting of hazardous waste management activities and § 8-7-209(b)(1)(F) gives specific authority to create a manifest system. A.C.A. § 8-7-209(a)(10) provides the Department with the broad authority to establish policies and standards for the effective management of hazardous waste. Finally, § 8-7-208 provides the Department with the authority to work cooperatively with other states and the U.S. government, with the approval of the Governor. This authority relates to the operation of the manifest and the assignment of EPA identification numbers.

Arkansas does not have an analog to 40 CFR 262.20(e) which allows generators under certain specified conditions not to be subject to the manifest requirements. This difference makes the State provisions more stringent than their Federal counterparts.

Arkansas does not have an analog to 40 CFR 262.44 which subjects generators of between 100 and 1000 kg per month to reduced recordkeeping requirements. This difference makes the State program more stringent than the Federal program.

- (1) **Manifests:** A.C.A. § 8-7-209(b)(1)(F) provides the Commission with specific authority to establish a manifest system for the transport of hazardous waste.

### **IV. STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]**

## ARKANSAS RCRA STATUTORY CHECKLIST

<b>The State needs the authority to:</b>				
1. Regulate all transporters EPA regulates under 40 CFR Part 263.	271.11	§ 3001 § 3003	Both	A.C.A. § 8-7-209(b)(1) introductory paragraph; A.C.A. § 8-7-209(b)(1)(A); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-224
2. Require use of I.D. numbers	271.11(a)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-208 A.C.A. § 8-7-224
3. Adopt recordkeeping requirements	271.11(b)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(D) and (F); A.C.A. § 8-7-224
4. Require use of manifest system consistent with DOT and EPA requirements	271.11(c)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(A); A.C.A. § 8-7-224
5. Require actions to assure that all hazardous waste is transported to designated permitted facilities	271.11(c)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-224
6. Require notification of discharges	271.11(d)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-224
7. Regulate cleanup of discharges	271.11(d)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-224; A.C.A. § 8-7-508
8. Adopt labeling requirements	272.11(e)	§ 3003(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(A); A.C.A. § 8-7-224
9. Regulate transportation in a manner consistent with DOT regulations	271.11(e)	§ 3003(b)	Non-HSWA	A.C.A. § 8-7-209(b)(1)(A); A.C.A. § 8-7-224
10. Regulate transportation of fuel produced from hazardous waste or from hazardous waste and any other material	271.11(e)	§ 3003(c)	HSWA	A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-224

## ARKANSAS RCRA STATUTORY CHECKLIST

**Remarks of the Independent Counsel:**

A.C.A. § 8-7-224 provides the Department with the authority to issue rules and regulations for the transportation of hazardous waste. These rules must be consistent with applicable rules and regulations issued by the U.S. Department of Transportation (DOT). General authority to promulgate such rules comes from § 8-7-202 which addresses the purposes of the Arkansas Hazardous Waste Management Act, and in particular, § 8-7-202(2) which states one of the purposes of the Act as establishing a program over the generation, storage, transportation, treatment, and disposal of hazardous waste. A.C.A. § 8-7-209(b)(1) gives the Commission the general authority to adopt and promulgate rules and regulations to implement and effectuate the purposes and intent of the Act. A.C.A. § 8-7-209(b)(1)(A) specifically addresses authority relative to containerization and labeling of hazardous waste. A.C.A., § 8-7-209(b)(1)(F) gives the Commission specific authority to create a manifest system.

A.C.A. § 8-7-209(a)(10) provides the Department with the broad authority to establish policies and standards for the effective management of hazardous waste. Finally, A.C.A. § 8-7-208 provides the Department with the authority to work cooperatively with other states and the U.S. Government with the approval of the Governor. This authority relates to the operation of the manifest and the assignment of EPA identification numbers.

(1) State requirements are equivalent to those of the federal program.

**V. STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12]**

**The State needs the authority to:**

1. Regulate all owners and operators of hazardous waste management facilities that EPA regulates under 40 CFR Parts 264 and 266	271.12	§ 3004	Both	A.C.A. § 8-6-1501-1504; A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3); A.C.A. § 8-7-209(a)(10) A.C.A. § 8-7-209(a)(11) A.C.A. § 8-7-209(a)(12) A.C.A. § 8-7-209(b)(1); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-211; A.C.A. § 8-7-215; A.C.A. § 8-7-218;
---	--------	--------	------	--

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-7-219; A.C.A. § 8-7-223; A.C.A. § 8-7-225(a);
2. Adopt technical standards for tanks; containers; waste piles; incineration; chemical, physical and biological treatment; surface impoundments; landfills; land treatment units; drip pads; miscellaneous units; containment buildings; boilers; and industrial furnaces	271.12(a)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(b)(1)
3. Prohibit landfilling of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste	271.12(a)	§ 3004(c)(1)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
4. Promulgate regulations that minimize the landfilling of containerized liquid hazardous wastes and free liquids in containerized hazardous wastes, and prohibit the landfilling of liquids absorbed in materials that biodegrade or release liquids when compressed	271.12(a)	§ 3004(c)(2)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
5. Prohibit disposal of non-hazardous liquids in Subtitle C landfills unless (1) the only reasonable alternative is disposal in a landfill or unlined impoundment, whether or not subject to Subtitle C, that contains or may contain hazardous waste and (2) disposal will not endanger an underground source of drinking water	271.12(a)	§ 3004(c)(3)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
6. Prohibit the use of material which is contaminated or mixed with dioxin or any other hazardous waste for dust suppression or road treatment	271.12(a)	§ 3004(1)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(b)(1)(B)
7. Require double liners for new landfills and surface impoundments	271.12(a)	§ 3004(o)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
8. Require the attainment of minimum destruction and removal efficiency for incinerators	271.12(a)	§ 3004(o)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
9. Regulate fuel containing hazardous waste and all persons who produce, burn, distribute, and market fuel containing hazardous wastes	271.12(a)	§ 3004(q)-(s)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
10. <b>Optional:</b> Exempt certain petroleum coke containing hazardous waste from petroleum refining from regulation it is to be burned for energy recovery unless the coke exhibits a characteristic of hazardous waste	271.12(a)	§ 3004(q)(2)(A)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)
11. Assure that permitting standards for underground hazardous waste tanks, at a minimum, satisfy Section §9003, Subtitle I of RCRA, 42 U.S.C. 9003	271.12(a)	§ 3004(w)	HSWA	A.C.A. § 8-7-218(b)(2); A.C.A. § 8-7-218(c)
12. Adopt modified requirements for solid waste from the extraction, beneficiation or processing of ores and minerals; for fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated from combustion of fossil	271.12(a)	§ 3004(x)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B)

## ARKANSAS RCRA STATUTORY CHECKLIST

fuels; and for cement kiln dust waste				
13. Require a showing of financial responsibility during facility operation	271.12(b)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B) A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219(1) and (2)
14. Adopt preparedness and prevention measures including contingency plans and emergency procedures to be followed in the event of a discharge or release	271.12(c)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B) A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219(4)
15. Adopt closure and post-closure requirements including financial assurance for costs involved	271.12(d)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219(1) and (2)
16. Adopt groundwater monitoring standards	271.12(e)	§ 3004(a), (o) & (p)	Both	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218
17. Require security to prevent unauthorized access to facilities	271.12(f)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218
18. Adopt standards for personnel training	271.12(g)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10) and (11); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-209(b)(1)(E); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219(3)
19. Adopt recordkeeping standards	271.12(h)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225
20. Adopt reporting requirements	271.12(h)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B);

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225
21. Adopt monitoring requirements	271.12(h)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225
22. Require inspections	271.12(h)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(6); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225
23. Require compliance with manifest system including that a signed copy of the manifest be returned to the generator	271.12(i)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-209(b)(1)(F); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218;

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-7-225
24. Promulgate rules for monitoring and controlling air emissions at treatment, storage, and disposal facilities	271.12(j)	§ 3004(n)	HSWA	A.C.A. §§ 8-4-303(1)&(2); A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225
25. Assure that permits issued after 11/8/84 require corrective action for releases of hazardous waste or constituents from any solid waste management unit at a facility, regardless of when the waste was placed in the unit	N/A	§ 3004(u)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225; A.C.A. § 8-7-227 A.C.A. § 8-7-508(a)(1)
26. Require corrective action beyond a facility's boundary and to include corrective action as a permit requirement	N/A	§ 3004(v)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-225; A.C.A. § 8-7-227 A.C.A. § 8-7-508(a)(1)
27. Require evidence of financial responsibility for corrective action on and off-site	N/A	§ 3004(a)(6)	HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-227(a)(2) A.C.A. § 8-7-219(1) and (2);
28. Identify when military munitions are hazardous waste and adopt provisions for safe transportation and storage of such waste	N/A	§ 3004(y)	Neither	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B) A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-224; A.C.A. § 8-7-225
29. Require use of I.D. numbers	271.13(b)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-208; A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(b)(1) introductory paragraph; A.C.A. § 8-7-209(b)(1)(D), and (F) 8-7-209(a)(1);
30. Adopt location, design, and construction standards	271.12(j)	§ 3004(a) & (b)	Both	A.C.A. §§ 8-6-1501 thru 1504; A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B) A.C.A. § 8-7-215;

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219(5) and (6); A.C.A. § 8-7-223
31. Require qualifications as to ownership	271.12(j)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B) A.C.A. § 8-7-215 A.C.A. § 8-7-216 A.C.A. § 8-7-218 A.C.A. § 8-7-219(6)
32. Require qualifications as to continuity of operation	271.12(j)	§ 3004(a)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(3)(B); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1)(B); A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-218

**Remarks of the Independent Counsel**

Arkansas has a series of broad authorities that are used to develop and implement a regulatory program for Treatment, Storage, and Disposal Facilities (TSDFs). A.C.A. §§ 8-7-209(a)(1), (3) and (5) provide the Department with general authorities to administer and enforce all laws, rules and regulations regarding hazardous waste management; develop and implement plans for the safe and effective management of hazardous wastes, including location standards; and to enforce rules and regulations to implement and effectuate the purposes and intent of the Arkansas Hazardous Waste Management Act. A.C.A. § 8-7-202(2) specifically states as one of the purposes of this Act the establishment of a program of regulation for the generation, storage, transportation, treatment and disposal of hazardous waste. Additionally, A.C.A. § 8-7-218(b)(2) requires that all rules, regulations, standards, procedures or other requirements adopted by the Commission must be no less stringent than the regulations promulgated or revised by the EPA pursuant to RCRA of 1976 as amended. A.C.A. § 8-7-209(a)(11) gives the Department the authority to establish policies and standards for effective hazardous waste management. A.C.A. § 8-7-209(a)(5) gives the Department the authority to require permits for the treatment, storage, and disposal facilities or sites. Under A.C.A. § 8-7-218(c), no permit may be issued except under the terms of regulations of the department which conform to the provisions of RCRA § 3005.

## ARKANSAS RCRA STATUTORY CHECKLIST

Arkansas' authorities to require specific standards, including remedial measures, financial responsibility, personnel qualifications, contingency plans and emergency procedures, and location standards, are provided by A.C.A. §§ 8-7-209(a)(8) and 8-7-219. A.C.A. § 8-7-219 specifies the terms and conditions that must be met before a permit can be issued for any commercial facility. Under A.C.A. § 8-7-209(a)(11), the State has the authority to establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities. A.C.A. § 8-7-225(a) gives the State the authority to require notification of hazardous waste activities and for owners and operators to establish and maintain records, make reports, install, use and maintain such samples, perform such tests, and provide other information to the department as the director may reasonably require.

Authority to grant variances from the facility standards in a manner consistent with RCRA is provided by A.C.A. § 8-7-211. However, the A.C.A. § 8-7-211 provision states that in no case shall the duration of any such variance exceed one (1) year.

Finally, in its administration and enforcement of the hazardous waste management act, A.C.A. § 8-7-209(a)(12) gives the department the additional authority to use all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 et seq. and the Arkansas Solid Waste Management act, §§ 8-6-201 et seq. State requirements are equivalent to those of the federal program.

**Corrective Action:** A.C.A. § 8-7-227 provides specific authority to require corrective action for all releases of hazardous wastes or constituents from any solid waste management unit at any treatment, storage or disposal facility seeking to be permitted under the provisions of the Act, to include taking corrective action beyond the facility boundary when necessary to protect human health and/or the integrity of the environment, and to demonstrate financial assurances for the completion of any prescribed corrective actions. Additional citations used by Arkansas as authority for implementing corrective action, with the appropriate points highlighted, include the following:

A.C.A. § 8-7-209(a)(1): "...to administer and enforce all laws, rules, and regulations regarding hazardous waste management."

A.C.A. § 8-7-209(a)(5) "...to issue, continue in effect, revoke, modify, or deny, ***under such conditions as it may prescribe***, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites..."

A.C.A. § 8-7-209(a)(6) "...to make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties under this subchapter ***and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto.***

A.C.A. § 8-7-209(a)(7) "...to make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter or any rules and regulations issued pursuant thereto or ***any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter.***"

## ARKANSAS RCRA STATUTORY CHECKLIST

A.C.A. § 8-7-209(a)(8)(A): "...to institute proceedings in the name of the Department in any court of competent jurisdiction to compel compliance with and to restrain any violation of the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto or *any permit issued thereunder*, and *require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this chapter...*"

A.C.A. § 8-7-209(a)(10): "... to establish policies and standards for effective hazardous waste management."

A.C.A. § 8-7-218(a): "...No permits shall be issued by the [ADEQ] for any facility unless the department, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that *any emission from the facility will comply with the provisions of this subchapter and all applicable state and federal standards and regulations concerning air and water quality* and that the transfer, handling, and storage of materials within the facility *will not cause conditions which would violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility*"

A.C.A. § 8-7-218(b)(2): "The rules, regulations, standards, procedures, or other requirements adopted and imposed by the department *shall not be less stringent than the regulations promulgated or revised by the Environmental Protection Agency* pursuant to the federal Resource Conservation and Recovery Act of 1976."

A.C.A. §§ 8-7-218(c): "*No permit shall be issued for hazardous waste treatment, storage or disposal facilities except under the terms of regulations of the Department which conform to the provisions of Sec. 3005 of the federal Resource Conservation and Recovery Act.*"

Most permit appeals in Arkansas deal with some facet of corrective action. Additionally, EPA's guidance to program staff reviewing authorization applications for corrective action warns the reviewer to be wary of broadly-worded implementing statutes that do not directly address the issues of retroactive liability, SWMUs, and financial assurance for corrective action. To provide additional authority for corrective and remedial actions that would be consistent on a statewide basis at active or inactive sites, Arkansas may additionally cite to provisions of the Remedial Action Trust Fund Act (Act 479 of 1985, as amended; Ark. Code, Ann, §§ 8-7-501 et seq. hereafter RATFA). RATFA provides ADEQ with broad authority to compel a site investigation and clean-up – whether it be at a site subject to permitting, a generator who has experienced a release, or an inactive or abandoned site – under the provisions of A.C.A. §§ 8-7-508(a)(1), which states:

**"Upon finding that a hazardous substance site exists or may exist, the [ADEQ] may, upon reasonable notice and after opportunity for hearing, issue an order to any person liable for the site under [A.C.A.] 8-7-512, if that person has caused or contributed to the release or threatened release of hazardous substances at the site. This order shall require that such remedial action be taken as necessary to investigate, control, prevent,**

## ARKANSAS RCRA STATUTORY CHECKLIST

### **abate, treat, or contain any releases or threatened releases of hazardous substances from the site."**

This statute avoids the need under the Hazardous Waste Management Act to prove that a SWMU is a RCRA-regulated or HWMA-regulated unit. Act 1824 of 2005 amended the RATFA to clarify that the provisions of this statute are retroactive; thus, if a release or threatened release exists, regardless of when it occurred, the ADEQ has the authority to make a responsible party do something about it. It only need be shown that a "hazardous substance site" (defined at A.C.A. § 8-7-503(7) as "any site or facility where hazardous substances have been disposed of or from which there is a release or threatened release of hazardous substances") exists or may exist, and that the responsible party caused or contributed to the release or threatened release.

The general authorities cited authorize ADEQ to establish a corrective action program which is at least as stringent as the Federal program. Specifically, ADEQ can compel a permit applicant to perform corrective action for releases of RCRA characteristic and/or listed hazardous wastes, either through a condition of the permit (A.C.A. § 8-7-209(a)(6) and § 8-7-227(a), through a separate enforcement action (A.C.A. §§ 8-7-209(a)(8), 8-7-214, (and 8-7-227(b) for interim status facilities), or through a combination of permit conditions and an enforcement action. In the case of a permit, A.C.A. § 8-7-218(c) prohibits the issue of a permit except under the terms of regulations which conform to the provisions of RCRA Sec. 3005. RCRA § 3005(c) requires compliance with Sections 3004(u) and (v), cited as the Federal authority for the corrective action requirements.

The federal standards first require that corrective action address releases from "*any solid waste management unit at a facility.*" The Hazardous Waste Management Act addresses regulated units under RCRA, which may or may not cover what may be determined to be a SWMU at a particular facility. Second, the federal requirements provide that corrective action be imposed "*regardless of when the waste was placed in the unit.*" A.C.A. § 8-7-227(a)(1) provides ADEQ with this same authority .

Both A.C.A. § 8-7-227(a)(3) and the provisions of RATFA adequately address the issue of pursuing releases beyond the facility boundary (RCRA § 3004(v)) in that if contamination has migrated off-site, then a "hazardous substance site" exists and ADEQ has the authority to require the responsible person (e.g. the facility owner or operator) to address the release. (Separate provisions of RATFA (A.C.A. § 8-7-521) provide for coordination between the responsible person and the off-site property owner for site access in order to perform remedial action under the provisions of a permit or an order.)

RATFA's broad authority in requiring investigation and necessary remedial actions wherever a hazardous substance site has been found or is suspected to exist also supports and reinforces Arkansas's equivalent state authorities for implementing HSWA's Omnibus Rule at RCRA Section 3005(c)(3), which enables the State and EPA to include any requirements deemed necessary in a permit, including the requirement to perform corrective action. This authority is particularly useful at permitted facilities where there is a release that is not specifically associated with a SWMU.

One issue concerns which portions of Arkansas's corrective action program can or cannot be authorized or implemented by EPA. Section 8-7-227 of the Hazardous Waste Management Act provides ADEQ with authority directly equivalent to that granted to EPA by the HSWA. By invoking RATFA as needed, ADEQ has additional, broader in scope authorities than the corresponding federal corrective action requirements in

## ARKANSAS RCRA STATUTORY CHECKLIST

that RATFA addresses a wider range of substances for which corrective action can be imposed.

Since RATFA is principally a remediation law, the range of substances to which it may be applied and for which investigation and clean-up can be compelled is a far broader range of contaminants than is available under the federal RCRA or HSWA. RCRA/HSWA regulations and statutes apply to a specific set of substances, e.g. "hazardous wastes" as characterized and/or listed in 40 CFR Part 261, and the "underlying hazardous constituents" of these waste streams. Under the provisions of RATFA, however, ADEQ can require responsible parties to investigate and implement any necessary remedial actions for "hazardous substances." RATFA as codified in A.C.A. § 8-7-503(6) defines "hazardous substances" as:

"(A) (i) As of March 21, 1985, any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act (Public Law 92-500);

(ii) any element, compound, mixture, solution, or substance designated pursuant to § 102 of Title I of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510);

(iii) any hazardous waste, including polychlorinated biphenyls, as defined by the Arkansas Hazardous Waste Management Act, as amended, § 8-7-201 et seq., and the regulations promulgated thereunder;

(iv) any toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under § 112 of the federal Clean Air Act; and

(vi) any hazardous chemical substance or mixture regulated under § 7 of the federal Toxic Substances Control Act; and

(B) Any other substance or pollutant designated by regulations of the commission promulgated under this subchapter;" (A.C.A. § 8-7-503(6))

Subparagraph (A)(iii) above addresses the substances to which the federal corrective action provisions apply, with the exception of polychlorinated biphenyls (PCBs) which are exempt from the federal RCRA/HSWA regulations.

In imposing corrective action investigation and remediation requirements in state-issued RCRA permits, ADEQ can address all "constituents of concern" found to be present at action levels in any SWMU addressed in the corrective action module. In identifying constituents of concern, ADEQ must consider all the substances listed at A.C.A. §§ 8-7-503(6)(A) and (B), and not just those wastes listed at 40 CFR Part 261 and the equivalent Reg. No. 23 Section 261. Under RATFA, even substances which have been exempted from listing as hazardous wastes (such as petroleum product spills and petroleum-contaminated media resulting from a UST release and subject to 40 CFR 280) are considered to be hazardous substances and corrective action requirements for these may be incorporated into a RCRA permit.

In such a permit, should EPA decide to step in and file a federal enforcement order to enforce or implement the conditions set out in the state-issued permit, then EPA is able to enforce all corrective action requirements for listed or characteristic hazardous wastes and their underlying hazardous constituents in exactly the same manner as if the permit were federally issued. Likewise EPA could enforce any other condition of the permit, regardless of whether that item was issued under Arkansas's authority under the HWMA or the RATFA, but only for the constituents of concern which are listed or characteristic hazardous wastes under 40 CFR Part 261 or Reg. No. 23 Section 261. EPA could not, for example, enforce a RATFA

## ARKANSAS RCRA STATUTORY CHECKLIST

requirement in a permit to address PCB contamination or petroleum contamination.

To the extent that EPA can step in and enforce all provisions of an Arkansas-issued permit to the same extent as it could with a federally-issued permit, Arkansas's use of its state authorities under the HWMA and RATFA are fully consistent with, equivalent to, and no less stringent than the corresponding federal requirements.

State requirements for corrective action are equivalent to those of the Federal program with the exception that the State provisions for the types of substances which may be subject to corrective action is broader in scope than the corresponding Federal provisions.

ADEQ requires permittees to establish financial assurances for corrective actions at the time the permit or permit modification imposing corrective action is finalized. Permittees may use any of the financial assurance mechanisms listed for closure, post-closure, and liability as set out in Section 264, Subsection H of APC&EC Regulation No. 23. State requirements are equivalent to those of the Federal program with the exception that the State provisions for the types of substances which may be subject to corrective action is broader in scope than the corresponding Federal provisions.

### VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR 271.25]

*Note that 40 CFR Part 271 does not specifically address State authority to adopt land disposal restrictions that are no less stringent than those adopted in 40 CFR Part 268. However, 40 CFR 271.25 requires each State program to have standards at least as stringent as the requirements and prohibitions that have taken effect under HSWA. Thus, the State must have authority to:*

<p>1. Prohibit the land disposal of any hazardous waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, and land treatment facilities; deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.</p>	271.25	§ 3004(d)-(g)	HSWA	<p>A.C.A. § 8-7-202;  A.C.A. § 8-7-209(a)(1);  A.C.A. § 8-7-209(a)(3)(B);  A.C.A. § 8-7-209(a)(10);  A.C.A. § 8-7-209(b)(1)(B);  A.C.A. § 8-7-215;  A.C.A. § 8-7-216;  A.C.A. § 8-7-218;  A.C.A. § 8-4-229 and Arkansas Water and Pollution Control Act, specifically A.C.A. § 8-4-202 and 8-4-203.</p>
---	--------	---------------	------	---

**Remarks of the Independent Counsel:**

## ARKANSAS RCRA STATUTORY CHECKLIST

Arkansas does not have direct statutory analogs to RCRA §§ 3004(d)-(k) and (m) which specifically address land disposal restrictions. Instead, the State has a number of very broad authorities to implement a hazardous waste management program. Those authorities which are the most relevant to the land disposal restrictions include A.C.A. § 8-7-209(a)(10) which gives the Department the authority to establish polices and standards for effective hazardous waste management. In addition, A.C.A. § 8-7-218(b)(2) requires that rules, regulations, standards, procedures or other requirements administered by the Department can not be less stringent than the regulations promulgated or revised by EPA pursuant to RCRA of 1976, as amended. A.C.A. § 8-7-218(c) prohibits the Department from issuing a permit to a facility for hazardous waste treatment, storage or disposal except under the terms of regulations which conform to the provisions of RCRA § 3005, as amended; RCRA § 3005(c) requires compliance with RCRA § 3004. A.C.A. § 8-7-303(1) declares that it is a general policy of Arkansas to establish a statewide program designed to protect the environment from the risks and burdens associated with the continued practice of disposing of hazardous that could otherwise be treated. Finally, A.C.A. § 8-7-308(4) gives the Department the authority to prohibit, by regulations or by condition of permit, the disposal of any hazardous waste within the State unless the owner or custodian of the wastes can demonstrate to the reasonable satisfaction of the Director that it is technically or economically infeasible for the wastes to be treated.

### VII. PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR 271.13 and 271.14]

**The State needs the authority to:**

<p>1. Require permits for owners and operators of all TSD facilities</p>	<p>271.13(a)</p>	<p>§ 3005(a)</p>	<p>Non-HSWA</p>	<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-214; A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-217; A.C.A. § 8-7-218; A.C.A. § 8-7-219; A.C.A. § 8-7-220; A.C.A. § 8-7-221; A.C.A. § 8-7-222; A.C.A. § 8-7-225; A.C.A. § 8-7-226</p>
--	------------------	------------------	-----------------	---

## ARKANSAS RCRA STATUTORY CHECKLIST

2. Prohibit operation of facilities without permits	271.13(a)	§ 3005(a)	Non-HSWA	A.C.A. § 8-7-215
3. <b>Optional:</b> Authorize owners or operators of TSD facilities to operate under interim status if the facility would qualify for interim status under the Federal program	271.13(a)	§ 3005(e)(1)	Non-HSWA	A.C.A. § 8-7-216 A.C.A. § 8-7-218; A.C.A. § 8-7-219;
4. <b>Optional:</b> Allow facilities to qualify for interim status if they (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) meet notice and permit application requirements <sup>i</sup>	271.13(a)	§ 3005(e)(1)	HSWA	A.C.A. § 8-7-216 A.C.A. § 8-7-218; A.C.A. § 8-7-219;
5. <b>Required for Interim Status:</b> Require that facilities may not qualify for interim status under the State analog to RCRA § 3005(e) if they were previously denied a Section 3005(c) permit or for which authority to operate has been terminated	271.13(a)	§ 3005(c)&(e)		A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216 A.C.A. § 8-7-218; A.C.A. § 8-7-219;
6. <b>Required for Interim Status:</b> Require interim status facilities to comply with standards at least as stringent as those in 40 CFR Part 265	271.13(a)	§ 3005(e)(1)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6);

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-7-213; A.C.A. § 8-7-216 A.C.A. § 8-7-227(b)
<p><b>7. <u>Required for Interim Status:</u></b> Determine that interim status terminates</p> <p>(i) for land disposal facilities qualifying for interim status prior to 11/8/84, on 11/8/85 unless, a Part B application and certification of compliance with ground-water monitoring and financial responsibility requirements are submitted</p>				<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219</p>
<p>(ii) for land disposal facilities in existence on the effective date of statutory or regulatory amendments under HSWA that require a permit, 12 months after the facility is first required to obtain a permit, unless a Part B application and certification of compliance with ground-water monitoring and financial responsibility requirements are submitted</p>				<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;</p>
<p>(iii) for incinerator facilities, by 11/8/89, unless the owner/operator submits a Part B application by 11/8/86</p>	271.13(a)	§ 3005(e)(2) & (3)	HSWA	<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-</p>

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;
(iv) for any facility other than a land disposal or an incineration facility, by 11/8/92, unless the owner/operator submits a Part B application by 11/8/88 <sup>ii</sup>	271.13(a)	§ 3005(e)(2) & (3)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;
8. <b><u>Required for Interim Status:</u></b> Require landfills, surface impoundments, land treatment units, and piles that received wastes after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring and corrective action requirements applicable to new units	271.13(a)	§ 3005(i)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219; A.C.A. § 8-7-227(b)
9. <b><u>Required for Interim Status:</u></b> Require interim status impoundments to comply with the double liner,	271.13(a)	§ 3005(j)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204

## ARKANSAS RCRA STATUTORY CHECKLIST

<p>leachate collection and ground-water monitoring requirements applicable to new units or stop treating, receiving or storing hazardous wastes (SR1)<sup>iii</sup></p>				<p>A.C.A. § 8-7-205  A.C.A. § 8-7-209(a)(1);  A.C.A. § 8-7-209(a)(5);  A.C.A. § 8-7-209(a)(10);  A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6);  A.C.A. § 8-7-213;  A.C.A. § 8-7-216;  A.C.A. § 8-7-218;  A.C.A. § 8-7-219;  A.C.A. § 8-7-227(b)</p>
<p>10. <b>Required for Interim Status:</b>  Impose any necessary requirements (including double liners) on an existing surface impoundment to protect health and the environment after determining that hazardous constituents are likely to migrate into groundwater. (SR1)<sup>22</sup></p>	<p>271.13(a)</p>	<p>§ 3005(j)</p>	<p>HSWA</p>	<p>A.C.A. § 8-7-202;  A.C.A. § 8-7-203  A.C.A. § 8-7-204  A.C.A. § 8-7-205  A.C.A. § 8-7-209(a)(1);  A.C.A. § 8-7-209(a)(5);  A.C.A. § 8-7-209(a)(10);  A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6);  A.C.A. § 8-7-213;  A.C.A. § 8-7-216;  A.C.A. § 8-7-218;  A.C.A. § 8-7-219;  A.C.A. § 8-7-227(b)</p>
<p>11. <b>Optional - Interim Status:</b> Provide conditional exemptions from the double-liner and leak detection system requirements for surface impoundments, including modification of the double liner, leachate collection and groundwater monitoring requirements for impoundments for impoundments in § 3005(j)(1) if prior to October 1, 1984, the owner/operator has entered into a consent decree, order,</p>	<p>271.13(a)</p>	<p>§ 3005(j)(2)-(9) and (j)(13)</p>	<p>HSWA</p>	<p>A.C.A. § 8-7-202;  A.C.A. § 8-7-203  A.C.A. § 8-7-204  A.C.A. § 8-7-205  A.C.A. § 8-7-209(a)(1);  A.C.A. § 8-7-209(a)(5);  A.C.A. § 8-7-209(a)(10);  A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6);</p>

## ARKANSAS RCRA STATUTORY CHECKLIST

<p>agreement with EPA or an authorized State which requires correction and provides protection of health and environment at least equivalent to that in § 3005(j)(1)</p>				<p>A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219; A.C.A. § 8-7-227(b)</p>
<p>12. <b>Required for Interim Status:</b> Require new units, expansions and replacements of interim status waste piles to meet the requirements for a single liner and leachate collection system in current regulations applicable to permitted waste piles</p>	<p>271.13(a)</p>	<p>§ 3015(a)</p>	<p>HSWA</p>	<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;</p>
<p>13. <b>Required for Interim Status:</b> Require new units, expansions and replacement units at interim status landfills and surface impoundments to meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments</p>	<p>271.13(a)</p>	<p>§ 3015(b)</p>	<p>HSWA</p>	<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;</p>
<p>14. Issue permits containing any conditions necessary to protect human health and environment</p>	<p>271.13(a)</p>	<p>§ 3005(c)(3)</p>	<p>HSWA</p>	<p>A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-</p>

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219; A.C.A. § 8-7-227(a)
15. Require permits to contain all technical and administrative standards for facilities	271.13(c)	§ 3005(a)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-216; A.C.A. § 8-7-218; A.C.A. § 8-7-219;
16. Provide for permit modifications and termination (revocation)	271.13(d) 271.14	§ 3005(c) § 3005(d)	Non-HSWA	A.C.A. § 8-7-213; A.C.A. § 8-7-215; A.C.A. § 8-7-216; A.C.A. § 8-7-217; A.C.A. § 8-7-218; A.C.A. § 8-7-219; A.C.A. § 8-7-220; A.C.A. § 8-7-221; A.C.A. § 8-7-222
17. Allow public disclosure of name and address of permit applicants and permittees	271.14	§ 3005(a)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6);
18. Review land disposal permits every five years and modify them as necessary to assure compliance with State's analogue to RCRA §§3004 and 3005 and to take into account improvements in technology	271.14	§ 3005(c)(3)	HSWA	A.C.A. § 8-7-218 A.C.A. § 8-7-220
19. Impose construction ban	271.14	§ 3005(a)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-217; A.C.A. § 8-7-218
20. Require permit application information	271.14	§ 3005(b)	Non-HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
21. Require permit applicants for landfills or surface impoundments to submit exposure information	271.14	§ 3019(a)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
22. Require permittee to certify annually that the generator at a TSD facility has a waste minimization program in place and that the method of treatment, storage, or disposal is that practicable, available method which minimizes present and future threat to health and environment	271.14	§ 3005(h)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
23. <b>Optional:</b> Allow a facility to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit. An owner/operator may file for a RCRA permit after construction or operation of such a facility has begun	Not required	§ 3005(a)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
24. <b>Optional:</b> A. Issue a one-year research development, and demonstration permit for a facility that proposes an innovative and experimental treatment technology or process not yet regulated				A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
B. Authority to waive or modify general permit application and issuance requirements for R&D permits, except for financial responsibility and public participation requirements				A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
C. Authority to terminate experimental activity if necessary to protect health and the environment	Not required	§ 3005(g)	HSWA	A.C.A. § 8-7-202; A.C.A. § 8-7-203 A.C.A. § 8-7-204 A.C.A. § 8-7-205 A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-218
<p><b>Remarks of the Independent Counsel:</b>  A.C.A. § 8-7-209(a)(5) provides the Department with broad authority to issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites as prescribed by A.C.A. § 8-7-215 through § 8-7-222. A.C.A. § 8-7-215(a) specifically prohibits a person from constructing, substantially altering or operating any hazardous waste treatment or disposal facility or site without a permit from the Department. There is a similar prohibition for the storage, treatment or disposal of hazardous waste. Under A.C.A. §§ 8-7-209(a)(1)&amp;(6), the ADEQ has broad authority to administer and enforce all laws and rules regarding hazardous waste management.</p> <p>A.C.A. § 8-7-218 requires that the Department only issue a permit if it will be operated in a manner that will comply with the provisions of the Arkansas Hazardous Waste Management Act and all applicable state and federal standards and regulations concerning air and water quality as well as protect and prevent unreasonable hazards to the environment or to the health and welfare of persons living and working near the facility. Under A.C.A. § 8-7-218(b)(2), the Department must adopt rules, regulations, standards and</p>				

## ARKANSAS RCRA STATUTORY CHECKLIST

procedures or other requirements that are not less stringent than the regulations promulgated or revised by EPA pursuant to RCRA of 1976, as amended. A.C.A. § 8-7-218(c) requires that no permit be issued for a hazardous waste treatment, storage, or disposal facility except under the terms of the regulations of the department which conform to the provisions of RCRA § 3005. A.C.A. § 8-7-219 sets out certain terms and conditions of a permit including, but not limited to, evidence of liability insurance, financial responsibility, appropriately trained and educated personnel, an appropriate preventive maintenance program, and a location consistent with the suitability criteria established pursuant to A.C.A. § 8-7-209(a)(3).

Consistent with the Federal program, A.C.A. § 8-7-220 limits permit duration to ten years with renewal for land disposal permits every five years. The Department has the authority for renewal as well as the authority to renew or modify the permit at any time during its term. A.C.A. § 8-7-221 provides the authority for permit revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Department or the provisions of the Arkansas Hazardous Waste Management Act. A.C.A. § 8-7-217 addresses public participation in the issuance of a permit, with the requirement of a 30-day advance notice of a permit hearing. Notice must be in the largest newspaper of the county in which the facility will be located. A.C.A. § 8-7-222 allows any person, who is denied a permit by the Director or who has had a permit revoked or modified, to have the opportunity for a hearing.

A.C.A. 8-7-216 provides the Department with authority relative to interim status both for existing and newly regulated facilities. However the state's date for qualifying as an existing facility is earlier than under the Federal requirements – March 14, 1979, versus November 19, 1989. A.C.A. § 8-7-216 also provides authority relative to the termination of interim status. These authorities are consistent with the requirements found at 40 CFR 270.73(e)-(g).

Under A.C.A. § 8-7-209(b), the department also has the authority to use all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, A.C.A. §§ 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act, A.C.A. §§ 8-6-201 *et seq.* A.C.A. § 8-7-213 ties the procedures for the conduct of hearings, notice, power of subpoena, presumptions, finality of actions and related manners to state provisions as specified in, but not limited to, sections of Chapter 4 of Title 8 addressing water and air pollution. These apply as long as they do not conflict with provisions set forth in the Hazardous Waste Management Act. A.C.A. § 8-4-203, 8-4-204 and 8-4-205 primarily address public participation and procedures for hearings. Two public notices are required for all new permitting actions (excluding permit transfers and minor modifications of existing permits): 1) when the application is determined to be administratively complete; and 2) when the draft permit is complete or the application is denied.

Fees are required by A.C.A. § 8-7-226 and Reg. No 23, Section 6 for permitting. This requirement is broader in scope because there is not a direct Federal analog addressing permit fees.

State requirements are equivalent to those of the Federal program.

### **VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14]**

## ARKANSAS RCRA STATUTORY CHECKLIST

<i>The regulations at 40 CFR 271.14 require that an authorized State program contain certain public participation procedures contained in 40 CFR Part 124. Thus, a State needs the authority to promulgate regulations that require:</i>				
1. Draft permit, fact sheet, etc.	271.14(v) & (w)	§ 7004(b)	Non-HSWA	A.C.A. § 8-4-203(b); A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217
2. Notice of all draft permits by radio broadcasts and notices in newspapers	271.14(x)	§ 7004(b)	Non-HSWA	A.C.A. § 8-4-203(c)(1)(A); A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217;
3. 45-day public comment period on all draft permits	271.14(y)	§ 7004(b)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217; Reg. 23 § 270.7;
4. Informal hearing with written notice of opposition	271.14(z)	§ 7004(b)	Non-HSWA	A.C.A. § 8-4-203(b)(2) and (3); A.C.A. § 8-7-

## ARKANSAS RCRA STATUTORY CHECKLIST

				209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217
5. Consideration of and response to public comments	271.14(aa)	§ 7004(b)	Non-HSWA	A.C.A. § 8-4-203(c)(2); A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217;
6. Pre-application public notice and meeting	N/A	§ 7004(b)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217;
7. Public notice of application	N/A	§ 7004(b)	Non-HSWA	A.C.A. § 8-4-203(b); A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4),

## ARKANSAS RCRA STATUTORY CHECKLIST

				(5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217
8. Information repository	N/A	§ 7004(b)	Non-HSWA	A.C.A. § 8-7-209(a)(1); A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(a)(10); A.C.A. § 8-7-209(b)(1), (3), (4), (5), and (6); A.C.A. § 8-7-213; A.C.A. § 8-7-217

**Remarks of the Independent Counsel:**

State requirements are generally equivalent to the federal regulations with the following exceptions:

- Pursuant to A.C.A. § 8-7-217 Arkansas requires that a public notice be published “in the largest newspaper published in the county in which a facility or facilities are located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties.” This provision makes the state requirement more stringent, as the federal regulation simply specifies display in a newspaper advertisement.
  
- A.C.A. § 8-4-203(d), Regulation No. 8 §§ 2.1.4(c) and 2.1.5(c), and Regulation No. 23 § 6(z) require that the costs of public notices be paid by the permit applicant, e.g., the facility owner/operator. The mechanism for this process is that the Department drafts (or approves) the public notice, for which the facility owner/operator arranges for publication and subsequently provides the Department with a copy of the published notice and proof of payment for publication costs for inclusion in the administrative record. This provision makes the state requirements more stringent.

**IX. REQUIREMENTS FOR USED OIL MANAGEMENT [See 40 CFR 271.26]**

**The State needs the authority to:**

1. Promulgate regulations establishing such performance standards and other requirements as may be necessary to protect health and the environment	271.26	§ 3014(a)	Both	A.C.A. § 8-7-209(b)(1)
--	--------	-----------	------	------------------------

## ARKANSAS RCRA STATUTORY CHECKLIST

from hazards associated with recycled oil, as specified in 40 CFR Part 279				
2. Promulgate special generator and transporter standards for recycled hazardous waste used oil	271.26	§ 3014(c)	HSWA	A.C.A. § 8-7-209(b)(1)
3. <b>Optional:</b> Deem hazardous waste used oil recycling facilities to have a permit if they comply with the State's analogue to the §3004 standards. However, a State must retain the authority to require individual permits if necessary to protect human health and the environment	271.26	§ 3014(d)	HSWA	A.C.A. § 8-7-209(a)(5); A.C.A. § 8-7-209(b)(1)

**Remarks of the Independent Counsel:**

Arkansas has adopted the federal regulations cited at 40 CFR 279. State regulations are equivalent to the Federal requirements.

### **X. INSPECTIONS [See 40 CFR 271.15]**

**The State needs the authority to:**

1. Enter, inspect and obtain samples (at all regulated premises and where records are kept)	271.15(c)	§ 3007	Non-HSWA	A.C.A. § 8-1-107 A.C.A. § 8-7-209(a)(6) A.C.A. § 8-7-225(b) and (c)
---	-----------	--------	----------	---

**Remarks of the Independent Counsel:**

A.C.A. § 8-1-107 and § 8-7-209(a)(6) provides the Department with broad inspection authorities allowing the Department to make such investigations and inspections and to hold hearings as it deems necessary to discharge its duties under the Arkansas Hazardous Waste Management Act and to ensure compliance with this Act and any orders, rules, and regulations issued pursuant to this Act. A.C.A. § 8-7-225(b) gives the Department or any authorized employee or agent specific authority to examine and copy any books, papers, records or memoranda pertaining to the operation of the facility. Finally, A.C.A. § 8-7-225(c) provides specific authority allowing the Department to enter any public or private property for the purpose of obtaining information or conducting surveys or investigations "necessary or appropriate for the purposes" of the Act.

### **XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT) [See 40 CFR 271.16]**

## ARKANSAS RCRA STATUTORY CHECKLIST

<b>The State needs the authority to:</b>				
1. Immediately restrain unauthorized activity	271.16(a)(1)	§ 3006	Non-HSWA	A.C.A. § 8-7-209(a)(7); A.C.A. § 8-7-214
2. Sue to enjoin any threatened or continuing program violation without prior revocation of permit	271.16(a)(2)	§ 3006	Non-HSWA	A.C.A. § 8-7-209(a)(8) A.C.A. § 8-7-213
3. Obtain civil penalties for any violation (maximum no less than \$10K per day)	271.16(a)(3)(i), (b), and (c)	§ 3006	Non-HSWA	A.C.A. § 8-7-204(b) A.C.A. § 8-7-213 A.C.A. § 8-4-103(b)
4. Obtain criminal penalties for specified maximum violations (no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law	271.16(a)(3)(ii) & (b)	§ 3006	Non-HSWA	A.C.A. § 8-7-204(a) A.C.A. § 8-7-213 A.C.A. § 8-4-103(a)
5. Allow public intervention	271.16(d)	§ 7004	Non-HSWA	A.C.A. § 8-7-206 A.C.A. § 8-7-207
6. <b>Optional:</b> Require that neither the State nor citizens may bring action against common carriers for imminent hazards arising after delivery of the shipment to the consignee, provided the carrier exercised due care when handling the work.	Not required	§ 7002(g) § 7003(a)	HSWA	N/A

**Remarks of the Independent Counsel:**

A.C.A. § 8-7-214 addresses emergency orders for imminent hazard and provides the director with the authority to issue an order, without notice or hearing, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to human health or to the environment, or that an emergency exists requiring immediate action to protect public health and welfare.

The persons to whom the order is directed must comply with the order immediately, but, on written application to the Director within 10 days of the order's issuance, that person has the right to a hearing before the Commission within 10 days after the receipt by the Director of the written request for the hearing.

A.C.A. § 8-7-209(a)(8) gives the Department the authority to institute proceedings in the name of the Department in any court of competent jurisdiction to compel compliance with, and to restrain any violation

## ARKANSAS RCRA STATUTORY CHECKLIST

of the Arkansas Hazardous Waste Management Act or any rules, regulations, and orders or permits issued thereunder. There is no restriction that the permit must be revoked before these proceedings can be instituted. A.C.A. § 8-7-213 indicates that the procedures followed will be those from the sections cited from the State's Water and Air Pollution Control Act.

A.C.A. §§ 8-7-204(b) and 8-4-103(b) both provide authority to obtain civil penalties. The maximum amounts at A.C.A. § 8-4-103(b) are \$10,000 per day per violation and at A.C.A. § 8-7-204(b) they are \$25,000 per day per violation. A.C.A. § 8-7-213 makes the provisions at A.C.A. § 8-4-103(b) relevant to hazardous waste, but includes the proviso that the provisions from the Water and Air Pollution Control Act apply only if they are not in conflict with the provisions of the Hazardous Waste Management Act. Therefore, the provisions at A.C.A. § 8-7-204(b) override. In addition, the Department, as per A.C.A. § 8-7-204(b)(3), can recover all costs, expenses and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of the Hazardous Waste Management Act.

Arkansas has four different types of criminal penalties. The burden of proof for these penalties is no greater than under the Federal law. These penalties are at least as stringent as, and in most cases more stringent than, those required for authorization.

Under the first (A.C.A. § 8-7-204(a)(1)), criminal penalties can be assessed for violation of any provision of the Hazardous Waste Management Act or a violation of any rule, regulation, or order of the Commission or the Department. This is considered a misdemeanor; if a person is convicted, that person is subject to imprisonment for not more than 1 year or a fine of not more than \$25,000 or subject to both fine and imprisonment. Additionally, for the purpose of the fines only, each day or part of a day during which the violation is continued or repeated constitutes a separate offense.

The second type of criminal penalty (A.C.A. § 8-7-204(a)(2)(B)) results if a person violates the provisions of the Hazardous Waste Management Act or violates any rule, regulation, or order of the Commission or the Department and then leaves the State or the jurisdiction of the State. In this case, the person is guilty of a felony. If convicted, that person is subject to imprisonment for not more than 5 years or a fine of not more than \$50,000 or both. As with the first type of criminal penalty, each day or part of any during which the violation is continued or repeated constitutes a separate offense.

The third type of criminal penalty (A.C.A. § 8-7-204(a)(3)) can be assessed when a person is convicted of treating, storing, transporting, or disposing of any hazardous wastes and purposely, knowingly or recklessly causing the release of hazardous wastes into the environment in a manner not otherwise permitted by law, or creates a substantial likelihood of endangering human health, animal or plant life, or property. The person is guilty of a felony and subject to imprisonment for not more than 10 years or to a fine of not more than \$100,000 or both. Each day or part of day during which the violation is continued is considered a separate offense.

The fourth type of criminal penalty (A.C.A. § 8-7-204(4)) differs from the third type in that the violation must also include placing another person in imminent danger of death or serious bodily injury. This is also a felony and subject to criminal penalties of not more than 20 years imprisonment or a fine of not more than \$250,000 or both. Each day or part of day during which the violation continues is considered a separate

## ARKANSAS RCRA STATUTORY CHECKLIST

offense.

Finally, under A.C.A. § 8-7-204(a)(5), a person convicted and subject to any of the above criminal penalties may also be subject to additional fines if that person derived pecuniary gain from the commission of the offense. The fine may not exceed twice the amount of the pecuniary gain.

The provisions at A.C.A. § 8-4-103 apply, but as per A.C.A. § 8-7-213, the provisions at A.C.A. § 8-7-204 take precedence.

A.C.A. § 8-7-206 allows any person adversely affected by a violation of the hazardous waste rules, regulations, or orders issued pursuant thereto, to have a private right of action for relief against such violation. Rule 24(a), A.R.C.P. provides for intervention as a matter of right when timely application is made by any person claiming an interest in the subject matter of the litigation and who is so situated "that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." The existence of the private right of action provided by A.C.A. § 8-7-206 constitutes a sufficient interest to invoke the "intervention of right" provision of Rule 24. A.C.A. § 8-7-209(b)(1) provides for public notice and hearing in the rule-making process. The public participation requirements of 40 CFR 271.16(d) are supplied by A.C.A. § 8-7-206 and Rule 24(a) of the Arkansas Rules of Civil Procedures; and by Part VIII, Section 5 of Regulation No. 8 which provides for intervention in the administrative process. The right of intervention under Regulation No. 8 includes intervention in enforcement actions brought thereunder.

### **XII. SHARING OF INFORMATION WITH EPA [See 40 CFR 271.17]**

**The State needs the authority to:**

1. Share all information with EPA	271.17(a)	§ 3007(b)	Non-HSWA	A.C.A. § 8-7-208(b)(2) A.C.A. § 8-7-225(d)(2)
-----------------------------------	-----------	-----------	----------	--

**Remarks of the Independent Counsel:**

A.C.A. § 8-7-208(b)(2) provides the Department with the authority to enter into agreements with the responsible authorities of the United States. In addition, under A.C.A. § 8-7-225(d), any information obtained by the Department must be made available to the public unless the Department certifies such information to be confidential. Nothing in the State's statutes or regulations may be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the State or Federal government.

### **XIII. EXPOSURE ASSESSMENTS**

**The State needs the authority to:**

1. Make exposure and health assessment	Not in 40	§ 3019(b)(1)	HSWA	A.C.A. § 8-7-
--	-----------	--------------	------	---------------

## ARKANSAS RCRA STATUTORY CHECKLIST

information available to the Agency for Toxic Substances and Disease Registry (See CERCLA § 104(i)) (SI)	CFR Part 271			208(b)(2) A.C.A. § 8-7-209(a)(2) and (9)
<p><b><u>Remarks of the Independent Counsel:</u></b>  A.C.A. § 8-7-208(b)(2) gives the Department the authority to enter into agreements and work cooperatively with other States and the Federal government. A.C.A. § 8-7-209(a)(2) gives the Department the authority to conduct and publish such studies of hazardous waste management in Arkansas as are deemed appropriate. A.C.A. § 8-7-209(a)(9) provides authority to initiate, conduct, and support research, demonstration project and investigations to assist in the development of procedures, standards, criteria, and rules and regulations.</p>				
<p><b>XIV. RADIOACTIVE MIXED WASTE</b></p>				
1. Regulate hazardous waste that is radioactive except to the extent that the waste is source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended. (68 Stat. 923) (MW) <sup>22 iv</sup> ,	271.9(a)	§ 1004(27)	Non-HSWA	A.C.A. § 8-7-209; A.C.A. § 8-7-308; A.C.A. § 8-7-203(6); A.C.A. § 20-21-207; A.C.A. § 20-21-208
<p><b><u>Remarks of the Independent Counsel:</u></b>  The regulation and management of radioactive mixed wastes are subject to the requirements of the Arkansas Department of Environmental Quality (ADEQ) and the Arkansas Department of Health and Human Services (ADHHS). ADEQ has jurisdiction over the management of hazardous waste under the Arkansas Hazardous Waste Management Act of 1979, as amended; ADHHS has jurisdiction over licensing or registration of by-product, source, special nuclear materials or devices or equipment utilizing such materials under the Arkansas Radiation Control Act, as amended. A Memorandum of Understanding between the two entities delineates the specific responsibilities of each agency.</p>				
<p><b>XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]</b></p>				
<p><b>The State needs the authority to:</b></p>				
1. Make information obtained on treatment, storage, and disposal facilities available to the public in substantially the same manner and to the same degree as if EPA were running the program.	271.17(c)	§ 3006(f)	HSWA	A.C.A. § 25-19-103(1) A.C.A. § 25-19-105 A.C.A. § 25-19-107 A.C.A. § 8-4-222

## ARKANSAS RCRA STATUTORY CHECKLIST

				A.C.A. § 8-4-223 A.C.A. § 8-4-226 A.C.A. § 8-4-227 A.C.A. §§ 8-7-204(b) and (g) A.C.A. § 8-7-225(d) A.C.A. § 4-75-601(4) APC&EC Regulation No. 8 APC&EC Regulation No. 23 § 6 MOA, U.S. EPA Region VI/ADEQ
--	--	--	--	--

**Remarks of the Independent Counsel:**

All state records shall be available to the public unless they are exempt from the disclosure requirements of Ark. Code Ann. §§ 25-19-101 to 25-19-107, which provide fewer exemptions than the Federal FOIA, 5 U.S.C. 552. Arkansas does not exempt matters established by Executive order to be kept secret in the interest of national defense or foreign policy as provided by 5 U.S.C. 552(b)(1)(a) and (b), nor does the State FOIA exempt all inter-agency or intra-agency memoranda or letters as provided at 5 U.S.C. 552(b)(5). Ark. Code Ann. 25-19-105(7) does exempt unpublished memoranda, working papers, and correspondence of the Governor, legislators, Supreme Court Justices, and the Attorney General.

Ark. Code Ann. § 25-19-105-(7) relates to executive privilege, as does 5 U.S.C. 552(b)(5). The Arkansas exemption is narrower and more restrictive in scope than the broad Federal exemption. Furthermore, the Arkansas exemptions, with rare exceptions, do not lie within the scope of information normally provided by EPA pursuant to RCRA. Thus, the State FOIA, Ark. Code Ann. §§ 25-19-101 to 25-19-107, provides fewer exemptions than the Federal FOIA, 5 U.S.C. 552, as described above.

State authorities which provide for public availability of information regarding facilities and sites for the treatment, storage, and disposal of hazardous wastes in substantially the same manner as EPA are distributed across several titles of the Arkansas statutes and regulations. The Arkansas Freedom of Information Act, codified at Ark. Code Ann. §§ 25-19-101 to 25-19-107 contains the basic provisions. Ark. Code Ann § 25-19-103 describes a scope of records subject to request no more restrictive than that defined by 40 CFR 2.100(b).

Under the Arkansas FOIA, "all records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records." (Ark. Code Ann. § 25-19-103) The burden is placed on the agency to demonstrate that any record meets one of the exceptions specified in the Act. Except for records which the law allows or requires to be closed, "all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records." (Ark. Code Ann. § 25-19-105) No written request is required in order to have access to public records. Records are open upon request at any time during business hours. Only if the specific record requested is in use or in storage can the agency refuse access upon request, even so the

## ARKANSAS RCRA STATUTORY CHECKLIST

record must be provided within three (3) days unless the record is subject to protection. (Ark. Code Ann. § 25-19-105) Policy for copying information is detailed in the Memorandum of Agreement between EPA Region 6 and ADEQ, as well as in APC&EC Regulation No. 8. The Department will make copies of specified records for the requesting individual, or the individual may make his own copies using Department or rented copiers at reduced cost. 40 CFR 2.104(b) is thus satisfied.

The Arkansas FOIA authorizes the release of information to "citizens of the State of Arkansas." This has been defined as a resident of, or one who normally does business within the State. A nonresident of Arkansas or a business which does not normally trade in the State may have a State resident to act as his agent or obtain the information on his behalf. If a nonresident does not choose to have an agent act on his behalf, he may make his request pursuant to Ark. Code Ann. § 8-7-225(d), which requires that any records, reports, or information obtained under the Arkansas Hazardous Waste Management Act shall be available to the public (no restrictions) for inspection and copying. Any such Department record, which is equivalent to the type of information available from EPA under the Federal FOIA, is available to the general public, without restriction, under this provision without reliance on the State FOIA. Arkansas provisions are therefore equivalent, though not identical, to Federal provisions.

The Hazardous Waste Management Act provides for the recovery of attorney's fees from the State should a plaintiff substantially prevail in a lawsuit for violation of the Arkansas Freedom of Information Act in relation to providing information pursuant to implementation of the State RCRA program and the Hazardous Waste Management Act. Arkansas provisions are again therefore equivalent, though not identical, to Federal provisions.

### XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES

1. <b>Optional:</b> Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA	Not required	N/A	N/A	A.C.A. § 8-7-211
2. Importation ban	Not required	N/A	N/A	No statutory provisions
3. Site Location requirements	Not required	N/A	N/A	A.C.A. § 8-6-1501 thru 1504; § 8-7-223
4. <b>Optional:</b> Adopt the Federal regulations by reference	N/A	N/A	N/A	A.C.A. § 8-7-209(b)(1)
5. <b>Optional:</b> Adopt the Federal regulations by reference to include any EPA revisions that may occur in the future (prospective incorporation	N/A	N/A	N/A	N/A

## ARKANSAS RCRA STATUTORY CHECKLIST

by reference)				
6. <b>Optional:</b> Limitation on State authority to adopt more stringent or broader in scope provisions	N/A	N/A	N/A	A.C.A. § 8-7-209(b)(2)

**Remarks of the Independent Counsel:**

1. Authority to grant variances from the facility standards in a manner consistent with RCRA is provided by A.C.A. § 8-7-211. However, the § 8-7-211 provision states that in no case shall the duration of any such variance exceed one (1) year.

3. The State has several specific authorities which relate to site location criteria A.C.A. 8-7-223 specifically prohibits a landfill disposal facility from being located within one-half mile of any occupied dwelling unless the applicant can demonstrate and the Department can find that a lesser distance will provide an adequate margin of safety under normal operating conditions. Likewise, A.C.A. § 8-6-1504 (in the Arkansas Environmental Equity Act (Act 1263 of 1993)) establishes a rebuttable presumption against locating any “high impact solid waste management facility” within 12 miles’ radius of any other such facility. The definition of a high impact solid waste management facility includes all commercial hazardous waste incinerators and commercial hazardous waste treatment, storage, or disposal facilities.