

**Arkansas Environmental Federation
54th Annual Convention
October 7, 2021
Arkansas Recycling Tax Credits**

**Walter G. Wright
Mitchell Williams Law Firm
wwright@mwlaw.com**

MITCHELL | WILLIAMS

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.



Arkansas Environmental Energy and Water Log Blog

<http://www.mitchellwilliamslaw.com/blog>

Three combined posts every business day
addressing federal/Arkansas legislation,
regulation, administrative/judicial decisions and
personnel transitions

Presentation will focus on an Arkansas statute/program that can provide significant financial incentives and can benefit some or all of the following:

- Environment
- Resource Recovery/Recycling
- Energy Use Reduction
- Industrial Development
- Feedstock cost reduction
- Reduce waste disposal costs

The program is the:

Arkansas Recycling Tax Credit (a state income tax credit)

Ark. Code Ann. § 26-51-506 *et seq.*

Not a new program. Has been in place for almost 30 years.

Has consistently annually generated millions of dollars in state income tax credits over the life of the program.

Objectives

Objectives of this Presentation Include:

- Ensure industrial and commercial facilities understand the important potential financial and environmental benefits the tax credit can provide
 - 30% of the cost of eligible machinery and equipment can be deducted from Arkansas state income tax
 - Increase demand for recyclables or generate supply
 - Use of alternative materials to reduce feedstock, waste disposal, or energy costs

Objectives

- What is the scope of the tax credit?
 - Equipment/machinery eligible
 - Is all solid waste eligible?
 - Specific exclusions?
- What is the process for obtaining the tax credit?
- Can it be carried over?

Objectives

Therefore, we will discuss:

- History of the tax credit
 - Legislative
 - Why was it enacted?
 - Purpose/Intent
 - Implementation/Development by Arkansas Division of Environmental Quality (“DEQ”)

Objectives

Discussion will also include:

- Process for Certification
 - DEQ application process
 - DEQ certification steps
 - Certifies to Department of Finance and Administration (Limited role)
- Key Issues/Strategic Planning

Objectives

Note this is an example of one of two key programs (not counting energy programs) that DEQ administers that is:

- Non-regulatory/non-enforcement
- Provides significant financial incentives to encourage environmentally beneficial activities

The other is the Arkansas Petroleum Storage Tank Trust Fund: Providing reimbursement for eligible owners and operators for remediating petroleum underground storage tank releases and addressing third party bodily injury and property damage claims

Background/History

Arkansas General Assembly Study Committee formed to address Arkansas Landfill/Solid Waste Issues in 1991

Chaired by Representative Byron Gibson from Southeast Arkansas.

- Perceived solid waste capacity crisis in parts of the United States
 - Inadequate landfill space in the near future?
 - Opposition to landfill capacity poor states transferring solid waste to landfill capacity richer states (including waste to Arkansas)
- Underfunded/undercapitalized landfills operated by various, numerous communities or some private entities that had inadequate controls

Background/History

Study Committee Drafted Legislation (1993)

- Regional Solid Waste Management Districts
 - Ensure need (Certificate of Need) for landfill/other solid waste management facilities
 - Consolidate solid waste facility management into better funded regional facilities
- Include encouragement/infrastructure for recycling
- Grants for local government

And

Background/History

- Arkansas Recycling Tax Credit
 - Overall purpose encourage:
 - Increase collection of recyclables
 - Increase demand for recyclables/solid waste reuse (critical)
 - How?
 - Existing/new facilities use/expand use of solid waste as feedstock/by-products/energy source
 - Develop/expand infrastructure for collection and/or processing of recyclables

Utilized by many Arkansas industries/facilities. A few examples include steel mills/scrap; steel slag; paper recycling; asphalt grinding; energy recovery from solid waste, etc.

Arkansas Recycling Tax Credit

Provides 30% Arkansas income tax credit for waste reduction, reuse or recycling machinery or equipment which is defined as:

. . . new or used machinery or equipment located in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, covert or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials (including cost of installation)

Arkansas Recycling Tax Credit

IF:

The machinery or equipment is being used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least 50% recovered materials, provided that at least 10% of the recovered materials shall be post-consumer waste.

Arkansas Recycling Tax Credit

Includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separating, etc. (early in the program a key question was where do you draw the line?)

We will work through some of the key jurisdictional terms.


Key Terms to Determine Applicability

- Solid waste – means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepapers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities

For once the breadth of this definition is helpful.

Key Terms to Determine Applicability

- Postconsumer waste – means products or other materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling

- 
- Two vertical gold lines on the left side of the slide.
- Recovered materials – means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes preconsumer material and postconsumer waste but not home scrap

- Preconsumer material – means material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap
- Home scrap – means materials or by-products generated from and commonly reused within an original manufacturing process

Exclusions

- Installation costs covered except:
 - Feasibility studies
 - Engineering costs of building to house equipment
 - Equipment used to service the equipment
- Additional exclusions:
 - Cost of service contracts, sales tax, maintenance, repairs
 - Motor vehicles (i.e., licensed vehicle or trailer)
 - Equipment or machinery must provide additional capacity or capability (no like replacement)
 - No other credits from other programs can have been utilized for the machinery or equipment
 - Credit cannot be recreated upon sale of machinery or equipment

Credit Carryover

Tax Credit Carryover (allows a taxpayer to apply unused credit to a future tax year)

Unused Arkansas Recycling Tax Credit may be carried over for a maximum of 3 consecutive years following the taxable year in which the credit originated.

Problem for new facilities – typically generate less profit/revenue in early years.

Department of Environmental Quality Implementation

DEQ Enterprise Services Administers the program.

Tommy Edgman – Principal Contact

- Many years of experience with the program

Rule No. 16 Promulgated to implement program (includes application forms)

Department of Environmental Implementation

Pursuant to application or pre-application process DEQ will make a determination that the tax credit can be certified (certification):

- Are machinery or equipment eligible?
- Inspection to determine machinery or equipment actually in place/exist
- Application is timely (within 90 days of calendar year following calendar year of purchase, final equipment expenditures made, or project startup – whichever is later)

Provide a narrative as required by APC&EC Regulation 16.201(c)(4) describing the project or equipment purpose, containing a list of supplier and approximate percentage of recovered materials, post-consumer waste, and products collected, separated, processed, modified, converted, treated or manufactured. (attach additional pages if needed).

Provide copies of invoices detailing all expenditures which include: 1) the seller's name; 2) the cost of each item claimed as waste reduction, reuse, or recycling equipment; and 3) the date on which such equipment was purchased.

Please identify the following:

Equipment	Serial Number	Model Number

Provide the cost(s) of installation of each item claimed as waste reduction, reuse or recycling equipment.

Certification or Denial

- If prerequisites for eligibility are in place, DEQ provides certification to DF&A of the amount of the tax credit taxpayer can claim.
- DEQ Director (certification) denial can be appealed to Commission pursuant to Rule 8
- Rule 16 also provides an informal settlement process

To my knowledge, appeal to Commission in only two instances:

- Processing of brake linings for resale (*In Re Morse Automotive Corp.* (1995))
- Disagreement over expiration of 90 day deadline/project startup (*In Re Marine Terminal*)

Strategies/Considerations

Are there opportunities to utilize for some beneficial purpose (energy, feedstock, construction, etc.) some type of solid waste?

Note that terms such as “collect,” “process,” “separate,” “modify,” “convert,” or “treat” mean there may be a variety of machinery or equipment that may be eligible (cradle to grave)

Strategies/Considerations

Do not wait until the end of the year to submit application because there will be a lag time for review of application and DEQ trip to the facility to verify equipment/machinery.

Include a log in the application which indexes the invoices submitted (do not just toss a bunch of invoices to DEQ).

Strategies/Considerations

Caveat in replacing equipment or machinery that replacement must provide greater capacity for recycling or additional capability.

Ensure deadlines are tracked for eligibility submission.

Do not hesitate to discuss with DEQ staff as they have a great deal of historical insight and genuinely encourage innovation within the limits of the statute.