

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION)
OF REGULATION NO. 36:) **DOCKET NO. 18-002-R**
USED TIRE RECYCLING AND)
ACCOUNTABILITY PROGRAM)

RESPONSIVE SUMMARY

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through, Kevin White, Associate Director, Office of Land Resources, and provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Regulation No. 8.815.

I. INTRODUCTION

The public comment record for Docket No. 18-002-R contains twenty-three (23) comments pertaining to changes to Arkansas Pollution Control and Ecology Commission Regulation 36, entitled Tire Accountability Program (Reg. 36).

The Notice of Proposed Regulation Changes, Public Hearing, and Comment Period were published on January 30 and 31, 2018. The Arkansas Pollution Control and Ecology Commission (APC&EC) conducted one (1) public hearing on the proposed Reg. 36 in North Little Rock on February 27, 2018. The public comment period ended on March 15, 2018, at 4:30 p.m. (Central Time).

No verbal comments were made during the February 27, 2018 public hearing on the proposed Reg. 36.

II. RESPONSES TO WRITTEN COMMENTS

The following people or organizations made written comments during the public comment period:

- **Melinda Caldwell, Director, Ozark Mountain Solid Waste District**

Comment 1 Please receive these comments concerning Regulation No. 36. Consideration is appreciated in the following language change in the areas of the proposed Regulation No. 36 as listed below:

“Use the manifest system developed by ADEQ and certify each tire removed from the rim and replaced with a new or used tire was assessed a rim removal fee”.

APC&EC Regulation No. 36.704(6)

APC&EC Regulation No. 36.705(A)(5)
APC&EC Regulation No. 36.706(6)
APC&EC Regulation No. 36.707(C)
APC&EC Regulation No. 36.708(6)
APC&EC Regulation No. 36.710(6)

Response: ADEQ agrees and has made the changes to the Revised Markup Draft that was suggested for all the Reg. 36 cites listed above in a manner that is consistent with the defined terminology in Chapter 2.

- **Craig Douglass, Executive Director, Regional Recycling & Waste Reduction District**

Comment 2 Please accept this letter as a request for consideration to revise Regulation No. 36, specifically 36.114 Administrative Incentive Grants, subsection (B).

Our particular interest is in the area market and economic stimulus incentives. This regulation states that the Director has discretion on the use of Used Tire Recycling Fund monies for the provision of grants for market and economic stimulus incentives, and that those grants are limited to applications from an eligible used-tire program, local government, or state agency, board or commission. We would respectfully request that an additional category of eligible applicants be considered:

(4) An Arkansas non-profit corporation whose mission is dedicated to recycling-related programs.

Our reasoning is this. In the course of developing more cohesive, inter-related and effective recycling programs for the state of Arkansas, we have recognized the need for research, education, program testing, promotion and inter-district implementation. In order to develop programs with the greatest opportunity to positively impact the entire state, and the statewide protection of the public health and environment, the recruitment of and support by private industry is essential. This recognition further incorporates environmental programs, particularly recycling and the beneficial use of recyclable material, into an overall economic development strategy, rather than simply a regulatory one.

We believe that allowing Arkansas non-profit corporations whose mission incorporates the opportunity for the above strategy could be helpful. And we recommend this category of possible applicants to you for the development of effective and efficient market and economic stimulus incentives.

Response: Reg. 36.1114(B) concerns eligible applicants for Administrative and Incentive Grants. Effective January 1, 2018, Ark. Code Ann. § 8-9-405(a) requires ADEQ to establish a Program to reimburse used-tire programs (UTPs). The Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., only allows ADEQ to disburse moneys to used-tire programs. The moneys collected for the Tire Accountability Program are deposited in the Used Tire

Recycling Fund, and the use of those funds are restricted by law under Ark. Code Ann. § 19-5-1147(c). Reg. 36.1114(B) defines those eligible for an abatement aid grant or market and economic stimulus incentive grant to include an eligible UTP, a local government, or a state agency, board, or commission. Reg. 36.1115(B) does make reference to the applicant or their contractor. Reg. 36, as proposed, allows a UTP to solicit the assistance of a contractor that could be a non-profit organization.

- **Wendy Bland, Executive Director, Benton County Solid Waste District**

The Benton County Regional Solid Waste Management District appreciates the opportunity to submit the following comments on the proposed revision to Regulation No. 36.

Comment 3 Regarding 36.107, the BCRSWMD requests that PC&E consider adding language requiring ADEQ Tire Accountability Program staff to prepare and publish a quarterly report indicating the Department’s efforts made in developing market opportunities for recycling and beneficial use. This is a critical activity and we would like to see accountability for the Department’s role in this activity.

Response: ADEQ agrees the efforts to develop market opportunities for recycling and beneficial use are critical to the overall success of the program. ADEQ is developing a statewide marketing plan to supplement the Arkansas Economic Development Commission (AEDC) review of Arkansas Tire Management District Used Tire Processing dated September 21, 2017. This statewide marketing plan is to serve as a tool to the UTPs to assist with compliance of Reg. 36.107. Ark. Code Ann. § 8-9-405(h) requires ADEQ to develop market opportunities for beneficial use of used tire material and educate the public on the Program. Ark. Code Ann. § 8-9-401(c)(3) states the primary goal of the UTP is to recycle or put to beneficial use as many used tires as possible.

Comment 4 Regarding 36.1110(B), requires a Reimbursement Request form to be submitted by the UTPs within 5 days after end of quarter. We request PC&E consider removing all reference to a Reimbursement Request form. We feel there is no reason for a separate form as all required information could be provided on the Quarterly Report form.

Response: The Reimbursement Request form referenced in Reg. 36.1110(B) is the Quarterly Report form TAP-9. A reference to the Quarterly Report form TAP-9 is being added to Reg. 36.1110(B) to clarify there is only one report form required to be submitted by the UTP for reimbursement. The Quarterly Report will be due within thirty (30) calendar days after the last day of each quarter.

Reg. 36.1110(B)(1) has been amended to read “A used-tire program shall submit to ADEQ a Quarterly Report no later than thirty (30) calendar days after the last day of each calendar quarter on Form TAP-9 to include:

- (a) A statement that all information has been submitted to the e-manifest system or an explanation of any discrepancy reports related to e-manifest system data; and
- (b) If applicable, documentation that supports its explanation of any discrepancy report during that calendar quarter.”

Reg. 36.1110(C) has been amended to read “ADEQ shall evaluate the Quarterly Reports and may use any of the following additional sources to determine Level One funding reimbursements to eligible used-tire programs:

- (1) Data from the e-manifest system including the quantity of used tires managed and any data related to the verification of the claimed quantity of used tires managed;
- (2) Quarterly progress reports;
- (3) Approved business plan rates;
- (4) Total reimbursement requests from all used_tire programs; and
- (5) Total available funding for quarterly disbursements.”

Comment 5 Regarding 36.1301, we request PC&E consider adding a subsection (C) to include critical prohibitions similar to that found in Reg. 14.702 related to improper management of used or waste tires.

Response: Critical prohibitions for waste tire sites have been added to Reg. 36.1301 similar to those found in Reg. 14.702. The following has been added as Reg. 36.1301(C): “A person shall not transport, transfer, store, collect, recycle, or otherwise manage used tires, processed tires, or residuals in any manner that:

- (1) Creates a nuisance;
- (2) Breeds or harbors mosquitos, snakes, insects, rodents, or other disease-causing vectors;
- (3) Causes a discharge of any constituent derived from used tires into the air or waters of the State unless permitted otherwise by ADEQ; or
- (4) Creates other hazards to public health, safety, or the environment as determined by ADEQ.”

Comment 6 The BCRSWMD believes that ADEQ is over-stepping their authority by requiring a Professional Engineer to sign off on the Collection Center Permit application (TAP-6). This is not mandated in the proposed Regulation 36 nor in the law. We request that PC&E amend 36.1503(A) to define the minimum requirements for obtaining a collection center permit. We further request that separate categories and requirements be defined for a collection center versus only a collection trailer.

We deeply appreciate the Commission and ADEQ’s consideration of these comments and suggested revisions.

Response: Form TAP-6 has been amended to reflect that the Professional Engineer certification is required for tire processing facilities when the tire

collection center's tire storage area is outside on the ground or a concrete pad and not in a building. The intent for requiring an engineering certification under these circumstances is to ensure there is appropriately designed storm water run-on and run-off measures in place.

Reg. 36.1502 defines the criteria and entities that need a tire collection center general permit.

Reg. 36.1508 covers the storage, technical, and operational criteria of tire collection centers whether the tires are collected and stored in a trailer, concrete pad, or another approved storage area.

- **Wendy Bland, President, Arkansas Association of Regional Solid Waste Management Districts**

The Arkansas Association of Regional Solid Waste Management Districts appreciates the opportunity to comment on the proposed Revision to Regulation No. 36.

We would like the PC&E Commission to know that all of the 18 Solid Waste Districts, and subsequent Used Tire Programs, are united in the common goal of trying to make this legislation into a successful used tire program for the state. We share ADEQ's desire to create and maintain a positive working relationship. We look forward to continuing to work with the Commission and ADEQ to operate an efficient and cost effective tire collection and processing program.

Comment 7 We would like to express our concern that the Commission allowed ADEQ staff to adopt, through a 2nd Emergency Rulemaking process, the proposed final version of Regulation 36. In essence, this immediately implemented all the requirements contained in the proposed final Regulation 36 before any public comments were considered. While ADEQ did facilitate a stakeholder process during fall 2017 for development of an initial version of Regulation 36, the final draft contains many changes, insertions and deletions which differ significantly from the version of the Regulation which was presented to stakeholders.

It is vitally important that, in the future, the department consult the districts regarding any proposed change to current solid waste regulations and laws prior to beginning rulemaking or legislation. The 18 solid waste districts and our mayors and judges fulfill the work of the solid waste system in this state. District personnel have operational experience and real-world knowledge. We are ready and willing to offer our expertise to create and operate the most efficient system.

It is also important to understand that, as a united group of districts, we must ensure that the needs and the best interests of our constituents and elected officials are considered. Therefore, if we feel that the needs of our citizens are not being met, we will not hesitate to work with our mayors and judges, their associations and the legislature to effect the necessary change.

Response: The Department acknowledges the comment.

Comment 8 Regarding 36.107, the Association requests that PC&E consider adding language requiring ADEQ Tire Accountability Program staff to prepare and publish a quarterly report indicating the Department's efforts made in developing market opportunities for recycling and beneficial use. This is a critical activity and we would like to see accountability for the Department's role in this activity.

Response: ADEQ agrees the efforts to develop market opportunities for recycling and beneficial use are critical to the overall success of the program. ADEQ is developing a statewide marketing plan to supplement the Arkansas Economic Development Commission (AEDC) review of Arkansas Tire Management District Used Tire Processing dated September 21, 2017. This statewide marketing plan is to serve as a tool to the UTPs to assist with compliance of Reg. 36.107. Ark. Code Ann. § 8-9-405(h) requires ADEQ to develop market opportunities for beneficial use of used tire material and educate the public on the Program. Ark. Code Ann. § 8-9-401(c)(3) states the primary goal of the UTP is to recycle or put to beneficial use as many used tires as possible.

Comment 9 Regarding 36.307(A), this regulation states that a UTP is subject to penalties for noncompliance including (1) failure to submit a business plan on or before December 31, 2018. However, all UTPs have already submitted and been granted conditional approval of the business plans. Future business plans would only be required under specific circumstances described in Chapter 4 and would not be required on the proposed date. We request that PC&E remove the date of December 31, 2018 to allow this section to apply to future revisions and plans that may be submitted. We suggest replacing with "as required in Chapter 4 of this Regulation".

Response: Reg. 36.307(A)(1) has been amended to read "Failure to submit a business plan as required in Chapter 4 of this regulation."

Comment 10 Regarding 36.307(A)(13), a requirement has been added for Used Tire Programs (UTPs) to provide a Disclosure Statement. However, the disclosure statement is not required of government agencies. The Association requests that PC&E strike 36.307(A)(13) since this applies only to UTPs.

Response: Reg. 36.307(A)(13) has been deleted since the disclosure statement is not required to be submitted by the UTPs. The remaining items in Reg. 36.307(A) have been renumbered accordingly.

Comment 11 Regarding 36.308(A), refer to comment above pertaining to 36.307(A). We request removing the dates to allow this section to apply to future revisions and plans that may be submitted.

Response: All dates have been removed in Reg. 36.308 to reflect a regulatory

requirement pertaining to penalties that could be imposed if a UTP fails to submit a revised business plan.

Comment 12 Regarding 36.401, this section refers to Initial Business Plans and includes a date that has passed as well. We suggest removing 36.401 in entirety. We request moving the requirements for District Board approval of business plans to 36.404(A).

Response: Reg. 36.401 has been amended by removing the dates and listing of specific calendar years. Reg. 36.401 now reads “A used-tire program that receives funding from the Used Tire Recycling Fund shall have an ADEQ-approved business plan that establishes its current operation expenses and proposed future operation plans. This business plan must be approved by the used-tire program’s board before submittal to ADEQ.”

Comment 13 Regarding 36.1110(B), requires a Reimbursement Request form to be submitted by the UTPs within 5 days after end of quarter. First, we request PC&E consider removing all reference to a Reimbursement Request form. ADEQ Tire Accountability Program staff have indicated that they consider the Quarterly Report form to be the same as the Reimbursement Request form. We feel there is no reason for a separate form as all required information could be provided on the Quarterly Report form.

If PC&E determines that a separate Reimbursement Request form is necessary, we request that PC&E consider amending both 36.1110(B)(1) and (2) to state that the Reimbursement Request form will be submitted within 30 days after the end of the quarter.

Response: See response to Comment 4 above.

Comment 14 36.1113(C) states that the Reimbursement Request will not be considered by ADEQ until the Quarterly Report is filed within 30 days after end of quarter.

Response: See response to Comment 4 above.

Comment 15 Regarding 36.1301, we request PC&E consider adding a subsection (C) to include critical prohibitions similar to that found in Reg. 14.702 related to improper management of used or waste tires.

Response: See response to Comment 5 above.

Comment 16 Regarding 36.1501(A), the regulation proposes that every collection center must be access-controlled and “only allow entry through specific points by authorized personnel”. In the September 2017 PC&E-adopted version of Regulation 36, there was an additional allowance for “Open collection center” which is a location where used tires are collected without the requirement of being attended by authorized personnel. It was the understanding of the UTPs that is dual system

would remain in effect in the final regulation.

Several UTPs currently have un-manned collection trailers strategically placed around their Districts for the convenient collection of used tires from their citizens. As a result, the affected UTPs did not include the extra costs of staffing every collection center in their submitted business plans. Many of these collection centers are in very remote locations and will require significant man-hours to adequately provide convenient collection from the citizens of that area.

The Association requests that PC&E consider a delay in implanting the requirement for Access Control on each location until 2019. This will allow time for the UTPs to amend their business plans as necessary to allow time for ADEQ staff to review and approve the revised plans. We also request that the ADEQ Director be allowed to extend the implementation deadline in the event that adequate funds are not available for increased business plan rates.

Response: During the process of developing the draft of final proposed Reg. 36, it was determined that since the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., requires shipments of tires to tire collection centers to be manifested as a measure of accountability, tire collection centers needed to be access-controlled. However, Reg. 36.1501(B), as proposed, does contain an allowance for a UTP board to request a one-time exception to ADEQ granting them the ability to establish an open-collection center for special non-profit or household collection events. Reg. 36.1501(B) is being amended to read “A board may establish annually a one-time event for a temporary open-collection center for non-profit or household collection events. Any additional events the board wants to establish that same calendar year must be approved by the Director. The approved length of time to operate a temporary open-collection center will be determined on a case-by-case basis.”

ADEQ acknowledges many of the UTPs' tire collection centers are located in rural areas. ADEQ also acknowledges access-controlled tire collection centers require personnel to man these locations which incur personnel expenses. For this reason, ADEQ encourages the districts to coordinate with available manned county facilities as a viable location for the required access-controlled tire collection centers. ADEQ has only issued conditional approval of the current business plan rates and conducted outreach to UTPs expressing to them if they needed to make amendments to their business plans due to regulatory requirements such as this, they could propose amendments to ADEQ. As a matter of record, several UTPs have already taken these measures and received adjusted business plan rates.

Ark. Code Ann. § 8-9-407(a)(3) requires the use of manifests to report all information related to the collection, transportation, distribution, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale by tire collection centers and the need for accountability for accurate reimbursement.

Comment 17 36.1506(B)(2) requires a weekly inspection of every collection center. Many of these collection centers are operated on behalf of the UTPs by counties and/or cities or are in very remote locations. The requirement for weekly inspections will cause a hardship for many UTPs. We request that PC&E consider amending 36.1506(B)(2) to require a monthly inspection of the collection centers.

Response: Reg. 36.1506(B)(2) has been changed to require monthly inspections of the tire collection centers.

Comment 18 Regarding 36.1610, there is a requirement that all Tire Processing Facilities now submit a Disclosure Statement. However, many of the Tire Processing Facilities are owned and operated by a Used Tire Program, which is a government entity and not required to file Disclosure Statements. We request that PC&E consider amending 36.1610 to add the words “unless exempt”.

Response: Reg. 36.1610 has been amended to read: (A) Except as provided under subsection (B) of this section, the applicant shall file a disclosure statement at the time the application is submitted. (B) The following entities are exempt from filing a disclosure statement under this section:

- (1) The federal government;
- (2) Other state government agencies, boards, and commissions;
- (3) Local governments including counties, cities, and municipalities; and
- (4) Regional solid waste districts authorized under the laws of the State of Arkansas.

Comment 19 The Association believes that ADEQ is over-stepping their authority by requiring a Professional Engineer to sign off on the Collection Center Permit application (TAP-6). This is not mandated in the proposed Regulation 36 nor in the law. We request that PC&E amend 36.1503(A) to define the minimum requirements for obtaining a collection center permit. We further request that separate categories and requirements be defined for a collection center building versus only a collection trailer.

We deeply appreciate the Commission and ADEQ’s consideration of these comments and suggested revisions.

Response: See response to Comment 6 above.

- **Jan Smith, Executive Director, White River Regional Solid Waste Management District**

The White River Regional Solid Waste Management District is submitting the following comments regarding Regulation 36. We support the comments provided by the Arkansas Association of Regional Solid Waste Management Districts that were submitted March 14th. There are specific comments that we want to include.

Comment 20 Regulation 1501(A) We were told at stakeholder meetings by ADEQ personnel that open collection centers would be allowed. In rural Arkansas these are

standard methods of collection. The purpose of collection centers is to collect waste tires so that they are not dumped along the roadside, in ditches and ravines, or left in unattended areas. They have served our District well over the past twenty five years. They have helped us prevent illegal dumping and other problems within our counties. We have 54 26-foot long open trailers that are placed in convenient places for the collection of waste tires. Some serve local dealers only, others are at designated collection sites, and others are dropped at locations upon request for short time periods. The cost of creating access-controlled sites with entry through specific points by authorized personnel will increase our costs significantly, encourage illegal dumping and create additional problems for the used tire program. We have proven situations where access-controlled sites do not solve any accountability issues or prohibit access. One access-controlled site we currently have in Batesville at a local tire dealer has illustrated that this does not work. The site has an 8 foot fence around the trailer which is locked. At night the site is either accessed by climbing the fence, by cutting the fence or just leaving tires piled up outside the fence. They will back a truck up to the fence and climb from the bed of the truck into the fenced area to the trailer. This is not an isolated site but is located at an intersection of the main highway through town and another highway. We request that we be allowed to continue our sites that work well for us. If people want access they will get access.

In our most rural counties we have minimal choices for access controlled sites. We have handled some of the cases by taking a trailer to a specific tire dealer for several days and allowing tires to be collected until the trailer is full. These pick up events might happen once or twice a year. There is not enough business to create the need for full time trailer to be sited. Our collection program has evolved over time and the decisions used are based on best practices learned for that county.

Response: See response to Comment 16 above.

Comment 21 Regulation 36.1501(B) The Used Tire Program Board should not be required to petition ADEQ to conduct a temporary open-collection center for events. County collections and other type collection events should be at the discretion of the Board. This adds a time consideration and burden on the UTP.

Response: The Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., requires ADEQ to establish a program that is accountable and sustainable. Reg. 36.1501(B) is being amended to read “A board may establish annually a one-time event for a temporary open-collection center for non-profit or household collection events. Any additional events the board wants to establish that same calendar year must be approved by the Director. The approved length of time to operate a temporary open-collection center will be determined on a case-by-case basis.”

Comment 22 Regulation 36.1506(B)(2) Since our collection sites are served by a 26-foot long trailer the need for weekly inspections is excessive. We request that is be revised to address the type of site. If the site is only a trailer the site should be inspected less frequently such as quarterly. We do not have collection sites where tires are stacked on the ground. We also request a minimum tire number be included before a collection center permit is required as it was in Regulation 14. When the collection site is only one trailer with a maximum capacity of 400 tires, it is a burden to have a permit.

Response: Reg. 36.1506(B)(2) has been amended to require monthly inspections of the tire collection centers. Ark. Code Ann. § 8-9-405 does not include a minimum tire quantity before a tire collection center permit would be required. Reg. 36.1508 contains provisions for a permitted tire collection center to collect a maximum of five thousand (5,000) loose tires or a maximum of ten thousand (10,000) compacted and baled tires at each permitted site.

Comment 23 Regulation 3.1508 A storm water permit should not be required for an open-top container or trailer. Tarping the trailer or putting it under a structure is a burdensome requirement when tires are designed to be out in the weather. Water touching waste tires is not an environmental hazard.

We appreciate your consideration of our comments in addition to the comments submitted by the Arkansas Association of Regional Solid Waste Management Districts.

Response: Reg. 36.1508(B)(1)(d)(ii), as proposed, reads “if an open-top container or trailer is used as a tire storage area at a tire collection center, a storm water permit will not be required if the container or trailer is covered with a tarp or placed under some type of constructed cover during inclement weather or when the business is closed.”

Accumulated water in a trailer or open-top container of tires could create a breeding ground for vector-type diseases.

Reg. 36.1508(B)(1)(c) has been amended to read “Storm water control methods shall comply with all applicable federal and state laws, regulations, rules, and permits.” This criterion applies to sections such as Reg. 36.1508(B)(1)(d)(iii) which has been amended to read “If the tire storage area is open, uncovered, or not enclosed on all sides of the container or trailer, a storm water permit may be required unless written notice is received from the Department that a permit is not required.”

Respectfully Submitted,

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