

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Motion to Withdraw
Rulemaking - Regulation No. 23**

Docket No. 17-001-R

MINUTE ORDER NO. 17-_____

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On May 11, 2017, the Arkansas Department of Environmental Quality (ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 23: Hazardous Waste Management. The Arkansas Pollution Control and Ecology Commission authorized initiation of the rulemaking by Minute Order 17-12 dated May 25, 2017.

The public notice, public hearing, and public comment period of the regulatory amendments have been completed. However, On July 7, 2017, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *American Petroleum Institute v. Environmental Protection Agency*, 2017 WL 2883867, No. 09-1038 (D.C. Cir. 2017), concerning Petitions for Review of a Final Regulation Promulgated by the United States Environmental Protection Agency (EPA). In this opinion, the Court vacated Factor 4 of the Legitimacy Test, vacated most of the Verified Recycler Exclusion, and reinstated the Transfer-Based Exclusion. The Court is to consider the parties' motions before issuing a mandate, and there is no specific timeline for the issuance of the mandate. After the Court issues the mandate, the EPA will issue a Direct Final Rule to make the revisions mandated by the Court.

Due to pending litigation and to avoid Regulation 23 from being interpreted as being more stringent than federal regulation, ADEQ has determined that the pending regulatory amendments to Regulation 23 should be withdrawn.

In consideration of the Motion to Withdraw Petition to Initiate Rulemaking to Amend Regulation No. 23 and other items filed related to the proposed regulatory amendments, the Commission grants the Motion filed by the Arkansas Department of Environmental Quality. The rulemaking initiated by Minute Order 17-12 is withdrawn and the docket is closed.

**PROMULGATED THIS 22nd DAY OF SEPTEMBER 2017 BY ORDER OF THE
ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

BY: _____
Miles Goggans, Chair

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PASSED: _____