

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 23, HAZARDOUS)
WASTE MANAGEMENT) DOCKET NO. 17-001-R**

**MOTION TO WITHDRAW RULEMAKING FOR REGULATION NO. 23:
HAZARDOUS WASTE MANAGEMENT**

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through Kevin White, Associate Director for the Office of Land Resources, and for its Motion to Withdraw Petition to Initiate Rulemaking to Amend Regulation No. 23 states:

1. 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 Petition has been designated as Docket No. 17-001-R.

2. The purpose of this rulemaking was to incorporate revisions to the federal hazardous waste management rules from 40 C.F.R. Parts 260-279 that affect the hazardous waste management program implemented by ADEQ and make other minor changes.

3. On May 25, 2017, the Arkansas Pollution Control and Ecology Commission (APC&EC or Commission) granted ADEQ's Petition to Initiate Rulemaking to Amend Regulation No. 23. The notice of public hearing was published on June 9 and 10, 2017, with the public hearing held on July 13, 2017, at ADEQ Headquarters in North Little Rock, Arkansas, and the public comment period expired on July 27, 2017

4. On July 7, 2017, the United States Court of Appeals for the District of Columbia Circuit (the Court) 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.

5. Proceeding with the proposed rulemaking before the Court mandate and before the EPA issues a Direct Final Rule would likely cause Regulation 23 to be more stringent than the federal regulations.

6. 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.

WHEREFORE, ADEQ respectfully requests that the Motion to Withdraw Petition to Initiate Rulemaking to Amend Regulation No. 23 be granted by adopting the attached Minute Order.

Respectfully submitted,



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