

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 34, STATE WATER PERMIT) DOCKET NO. 10-____-R
REGULATION)

PETITION TO INITIATE RULEMAKING TO PROMULGATE REGULATION NO. 34

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Promulgate Regulation No. 34, State Water Permit Regulation, states:

1. This is a new regulation intended to provide a permit by rule to cover wastes that are not discharged into waters of the State but are stored, disposed, or discharged in a manner that, if unregulated, will cause, or are likely to cause, pollution to waters of the State.
2. ADEQ proposes to initiate this regulation with provisions relating to the construction, operation and closure of pits associated with drilling oil and gas wells.
3. The Arkansas Department of Environmental Quality (“ADEQ”) initially regulated this activity by issuing a general permit under its statutory permitting authority found in the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §8-4-101 *et seq.* This general permit was appealed to the Union County Circuit Court.
4. As a result of that appeal, ADEQ was approached by the Arkansas Oil and Gas Commission (“AOGC”) about promulgating joint rules that would encompass the provisions of ADEQ’s general permit and provide consistency in the regulatory efforts of both agencies. As a result, AOGC promulgated Rule B-17, attached as Exhibit “G” and is hereby incorporated by reference.
5. The proposed APC&EC Regulation No. 34, State Water Permit Regulation, if adopted, will incorporate the provisions of Rule B-17 by reference. For certain types of pits,

owners or operators will be deemed to have a permit by rule for the purposes of the Arkansas Water and Pollution Control Act, if they follow the provisions of Rule B-17, as adopted by AOGC on October 28, 2010.

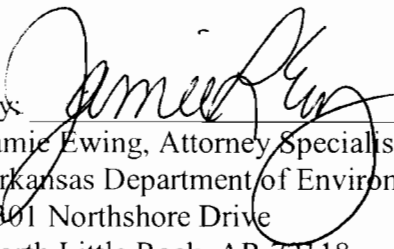
6. The pits covered by this regulation will include: circulation pits, completion pits, emergency pits, mud pits, reserve pits, test pits and workover pits.
7. The regulation will state that:

Owners or operators of all pits constructed during the drilling, completion, or testing of an oil, gas, or oil and gas production well, Class II Disposal Well, and Class II Commercial Disposal Well shall be deemed to have a permit by rule pursuant to Ark. Code Ann. §8-4-203(l), for the construction, operation, and closure of any pits covered under this Regulation if the operator is in full compliance with Rule B-17, as adopted by the Arkansas Oil and Gas Commission on October 28, 2010. *See Proposed Reg.34.202(A).*
8. In addition, Reg. 34.202(B) states that there shall be no discharge into waters of the state as a result of pit construction, operation or closure, nor should those activities cause waste to be placed in a location likely to cause pollution of waters of the state. Reg. 34.202(B) tracks the language of the Arkansas Water and Air Pollution Control Act at Ark. Code Ann. § 8-4-217(a).
9. This regulation will provide a common regulatory program for these pits between ADEQ and AOGC. The agencies will enter into a Memorandum of Agreement (“MOA”) for the implementation and enforcement of Rule B-17 and this portion of Regulation No. 34. A draft copy of the MOA is attached as Exhibit “F” and is hereby incorporated by reference.
10. Jamie Ewing and Steve Drown from ADEQ will be available to answer questions

concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit "B", and a copy of the Financial Impact Statement for the proposed revision is attached as Exhibit "C", both of which are incorporated by reference. The Economic Impact Statement filed with the Arkansas Economic Development Commission is attached as Exhibit "D" and is hereby incorporated by reference. A copy of the Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit "E" and is hereby incorporated by reference. A proposed minute order is attached as Exhibit "H" and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed Regulation No. 34.

Respectfully Submitted,

By: 
Jamie Ewing, Attorney Specialist
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118