

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

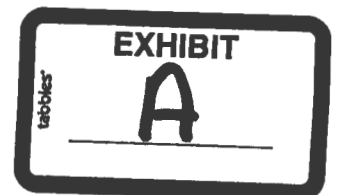
IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 34, STATE WATER PERMIT) DOCKET NO. 10-008-R
REGULATION)

STATEMENT OF BASIS AND PURPOSE FOR
ADOPTION OF REGULATION NO. 34

The Arkansas Pollution Control and Ecology Commission (hereinafter “APCEC” or “the Commission”) is given the power and responsibility to promulgate rules and regulations. Pursuant to Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”).

The Department “is given and charged with the power and duty to issue...permits, under such conditions as it may prescribe...to prevent, control, or abate pollution...” Ark. Code Ann. § 8-4-203(a)(1). Based on this authority, ADEQ issued a general permit covering the construction, operation and closure of pits associated with the drilling of oil and gas wells because the Department was concerned that wastes contained in those pits, if unregulated, would cause or would be likely to cause pollution to waters of the State. This general permit was appealed to Union County Circuit Court.

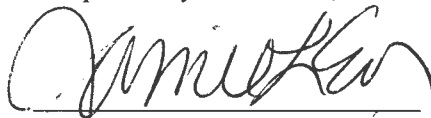
As a result of that appeal, ADEQ was approached by the Arkansas Oil and Gas Commission (hereinafter “AOGC”) to consider promulgating joint rules that would encompass the provisions of ADEQ’s general permit and provide consistency in the regulatory efforts of both agencies. As a result, AOGC promulgated Rule B-17, which incorporates many of the same requirements as the Department’s general permit.



The proposed Regulation No. 34, 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, Ark. Code Ann. § 8-4-101 *et seq.*, if they follow the provisions of Rule B-17, as adopted by AOGC on October 28, 2010.

This regulation will provide a common regulatory program for these pits between ADEQ and AOGC. This will offer continuity of practice for the industry and increase regulatory oversight of the activity. 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.

Respectfully submitted,



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