

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

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

**PETITION TO ADOPT SECOND EMERGENCY RULEMAKING AND  
PROMULGATE REGULATION NO. 36**

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 Petition to Adopt Emergency Rulemaking and Promulgate Regulation No. 36, states:

1. Act 317 of the 2017 Regular Session of the Arkansas General Assembly created the Used Tire Recycling and Accountability Program, requires the Arkansas Pollution Control and Ecology Commission (APC&EC) to promulgate regulations for the program, and requires ADEQ to implement and administer the program beginning January 1, 2018.

2. On January 26, 2018, the APC&EC initiated the permanent rulemaking process for this regulation. The draft regulation filed was in markup format per APC&EC requirements based on the original emergency rulemaking promulgated September 8, 2017.

3. Pursuant to APC&EC Regulation No. 8.807 and Ark. Code Ann. §§ 8-4-202(e) and 8-9-414, the Arkansas Department of Environmental Quality (ADEQ) seeks a second emergency rulemaking because the current emergency rulemaking will expire on March 7, 2018, and the permanent rulemaking process initiated by the APC&EC on January 26, 2018, (APC&EC Docket #18-002-R) cannot be completed by this date.

4. This second emergency rulemaking is filed as a “clean copy” per APC&EC requirements. However, the same changes made in the “markup draft” of the permanent

rulemaking initiated by the Commission on January 26, 2018, have been made to the second emergency rulemaking. These changes include: (a) simplifying the name of the program to the Tire Accountability Program (TAP); (b) providing comprehensive program administration information in compliance with Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 *et seq.*, to include provisions for permitting, licensing, enforcement, and beneficial uses; (c) removing preliminary implementation dates and deadlines that reference 2017; (d) adding references to new or renamed forms; and (e) making minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation.

5. In Act 317, the Arkansas General Assembly found:

“(1) If not properly managed, used tires pose a potential threat to human health and safety and the environment because used tires:

(A) Are a known breeding habitat for mosquitoes and other disease-transmitting vectors; and

(B) Pose substantial fire hazards;

(2) The state must have a used tire program for recyclable tires, waste tires, and used tires culled for resale that is accountable, effective, and efficient; and

(3) The primary goal of the used tire program is to recycle or put to beneficial use as many used tires as possible.”

6. Failure to implement this second emergency rulemaking will cause imminent peril to the public health and general welfare of the state because the second emergency regulation provides statutorily-required, essential information for the administration of the new program, to include funding for the used tire programs; management of used tires; prevention and remediation of illegal tire dumping; permitting procedures; and enforcement procedures because the current emergency regulation expires on March 7, 2018.

7. Pursuant to APC&EC Reg.8.814, ADEQ submits the following documents supporting adoption of the regulation to the Commission for its consideration:

a. Exhibit A – Final Proposed Regulation;

- b. Exhibit B – Governor’s Approval;
- c. Exhibit C – Bureau of Legislative Research (BLR) Questionnaire;
- d. Exhibit D – BLR Financial Impact Statement
- e. Exhibit E – Proposed Minute Order

WHEREFORE, ADEQ respectfully requests that the APC&EC finds that an emergency exists; adopts the Proposed Minute Order to adopt the second emergency rulemaking; and promulgates Regulation No. 36 with the stated effective date of March 8, 2018, to be effective for one hundred eighty (180) days thereafter or until the permanent rulemaking process for Regulation 36 is completed and permanent Regulation 36 is effective, whichever is sooner.

Respectfully submitted,



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