

ARKANSAS POLLUTION CONTROL
and ECOLOGY COMMISSION

REGULATION NO. 34
State Water Permit Regulation



FILED
AK. REGISTER DIV.
11 SEP 28 PM 3:56
MARSHALL
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

Approved by Arkansas Pollution Control and Ecology Commission
August 26, 2011

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Chapter 1 GENERAL PROVISIONS

Reg.34.101 Purpose

It is the purpose of this regulation to adopt standards applicable to the storage, discharge, or disposal of any waste which, if unregulated, will cause pollution of waters of the state or result in wastes being placed in a location where it is likely to cause pollution of the waters of the state. These standards are intended to protect public health and the environment, and prevent, control, or abate pollution.

Reg.34.102 Authority

Pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.* (hereinafter “the Act”), the Arkansas Pollution Control and Ecology Commission (hereinafter the “Commission” or “APC&EC”) hereby promulgates this Regulation No. 34.

Reg.34.103 Scope

This regulation applies to all persons proposing to construct, alter, extend, or operate any storage, discharge, or disposal system that does not discharge directly to waters of the state, and the operation of which, if unregulated, will cause pollution of waters of the state or result in wastes being placed in a location where it is likely to cause pollution of the waters of the state. This regulation does not apply to liquid animal waste management systems regulated under APC&EC Regulation 5 or underground injection control (UIC) facilities regulated under APC&EC Regulation 17 or Class II UIC wells permitted by the Arkansas Oil and Gas Commission. This regulation also does not apply to storage or disposal systems permitted under APC&EC Regulation 1 or Regulation 4 or to storage, discharge, or disposal systems which have been issued any NPDES permit other than a stormwater permit or to septic systems regulated by the Arkansas Department of Health.

Reg.34.104 Definitions

The following definitions apply to this Regulation:

“**ADEQ**” or “**Department**” means the Arkansas Department of Environmental Quality, or its successor.

“**Commission**” means the Arkansas Pollution Control and Ecology Commission.

“**Director**” means the Director of the Arkansas Department of Environmental Quality, or his or her designee, unless the context dictates otherwise.

“**Discharge**” means a discharge of any wastes in any manner which directly or indirectly permits such wastes to reach any of the waters of the state.

"Disposal" means the final use of waste, including, but not limited to, surface disposal, subsurface disposal, transport to a recycling or reuse facility, or placement in a landfill, incinerator, or injection well.

"Facility" or **"system"** means any site (including land or appurtenances thereto) or activity or operation that is subject to this regulation.

"Industrial Waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, mining, manufacturing, trade, or business or from the development of any natural resources.

"Owner" or "Operator" means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.

"Other Wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar chemicals, and all other organic or inorganic substances, not including sewage or industrial waste which may be discharged into the waters of the state. **"Any wastes"** and **"pollutants"** include sewage, industrial wastes, or other wastes.

"Person" means any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or any other entity.

"Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including excrementitious or other discharge from the bodies of humans or animals, together with such groundwater infiltration and surface water as may be present.

"Storage" means holding wastes prior to disposal in an open pit or pond dug in the ground, in open tanks, or other open vessel.

"Waste" means industrial waste, sewage, or other wastes.

"Waters of the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

Chapter 2

PERMIT REQUIREMENTS FOR CONSTRUCTION, OPERATION, AND CLOSURE OF PITS ASSOCIATED WITH OIL AND GAS WELLS AND BRINE PRODUCTION AND INJECTION WELLS

Reg.34.201 Pits covered by this Regulation shall include:

- (A) Circulation Pit: A pit used during drilling where Drilling Fluids are circulated during drilling operations. The Circulation Pit may be part of the Mud Pit. Circulation Pits may also refer to a series of open, above-ground tanks, usually made of steel.
- (B) Completion Pit: A pit used for storage of Completion Flow-Back Fluid and Drilling Fluids or other materials which have been cleaned out of the well bore during the initial completion of a well. Circulation or Mud Pits may be used as a Completion Pits when drilling operations conclude.
- (C) Emergency Pit: A pit used for containing fluids at an operating well during an actual emergency and for a temporary period of time. Use of the Emergency Pit is necessitated due to unplanned operational issues, which may include but is not limited to, a temporary shutdown of a disposal well or fluid injection well or associated equipment, temporary overflow of saltwater storage tanks on a producing lease, gas flaring, cement circulation, or a producing well loading up with formation fluids.
- (D) Mud Pit: A pit or series of pits used during drilling where fluids are mixed and circulated during drilling operations. Mud Pits may also refer to a series of open, above-ground tanks, usually made of steel.
- (E) Reserve Pit: A pit not part of the active circulation system, used to store Drilling Fluids or to contain fluids generated during drilling operations. Such fluids would include, but not be limited to, Cuttings, Drilling Fluids, and Encountered Water.
- (F) Test Pit: A pit constructed for use during a well test.
- (G) Workover Pit: A pit used for storage of Completion Flow-Back Fluid, Workover Flow-Back Fluid and other materials which have been cleaned out of the well bore during any subsequent completion or re-completion.

Reg.34.202 Permit Requirements for Construction, Operation, and Closure of Pits Associated with Oil and Gas Wells

- (A) Owners or Operators of all pits constructed during the drilling, completion, or testing of an oil, gas, or oil and gas production well, [brine production and injection wells], 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 Owner or Operator is in full compliance with Rule B-17, as adopted by the Arkansas Oil and Gas Commission on October 28, 2010.

- (B) No discharge or wastes resulting from pit construction, operation, or closure shall cause pollution of any of the waters of the state. No wastes resulting from pit construction, operation, or closure shall be placed in a location where it is likely to cause pollution of any waters of the state.
- (C) Any Owner or Operator who constructs, operates, or closes a pit in violation of any provisions of this Regulation may be subject to ADEQ enforcement action under the provisions of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq., including the penalties provided in Ark. Code Ann. § 8-4-103.

Chapter 3 RESERVED

Chapter 4 RESERVED

Chapter 5 RESERVED

Chapter 6 ADMINISTRATIVE PROCEDURES

Reg.34.601 Penalty Policy and Administrative Procedures

The provisions of APC&EC Regulation No. 7, Civil Penalties, and Regulation No. 8, Administrative Procedures, apply to this Regulation.

Reg.34.602 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect with the invalid provision or application, and, to this end, provisions of this Regulation are declared to be severable.

Chapter 7 EFFECTIVE DATE

Reg.34.701 Effective Date

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library and the Bureau of Legislative Research.

ARKANSAS REGISTER

Transmittal Sheet

Charlie Daniels
Secretary of State
State Capitol Room 026
Little Rock, Arkansas 72201-1094
(501) 682-3527

For Office Use Only: Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Arkansas Department of Environmental Quality

Contact Jamie Ewing E-mail ewing@adeq.state.ar.us Phone (501) 682-0918

Statutory Authority for Promulgating Rules A.C.A. § 8-1-203 (b)(1)

Rule Title: Regulation No. 34, State Water Permit Regulation; Docket No. 10-008-R; Minute Order No. 11-22

| | | |
|--|---------------------------------------|-----------------|
| Intended Effective Date | | Date |
| <input type="checkbox"/> Emergency | Legal Notice Published | <u>12/08/10</u> |
| <input checked="" type="checkbox"/> 10 Days After Filing | Final Date for Public Comment | <u>02/08/11</u> |
| <input type="checkbox"/> Other _____ | Reviewed by Legislative Council | <u>08/15/11</u> |
| | Adopted by State Agency | <u>08/26/11</u> |

☒ Electronic Copy of Rule Provided on disk or CD (per Act 1478 of 2003)

☐ Electronic Copy of Rule e-mailed from: _____

| | | |
|----------------|---------------|------|
| Contact Person | Email Address | Date |
|----------------|---------------|------|

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrative Hearing Officer

Title
09/16/11
Date

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AL. REGISTER DIV.
11 SEP 16 PM 3:35
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OF ARKANSAS



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL
SUITE 205
LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

RECEIVED

SEP 16 2011

BUREAU OF
LEGISLATIVE RESEARCH

September 16, 2011

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol Building
Little Rock, Arkansas 72201

RE: Regulation No. 34, State Water Permit Regulation; Docket
No. 10-008-R - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. Two (2) hard copies of the amendment to Regulation No. 34, State Water Permit Regulation.
2. Two (2) copies of Commission Minute Order No. 11-22
3. Two (2) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Charles Moulton".

Charles Moulton
Administrative Hearing Officer

Enclosures

ARKANSAS STATE LIBRARY



Agency Certification Form For Depositing Final Rules and Regulations At the Arkansas State Library

Documents Services • Arkansas State Library
One Capitol Mall • Little Rock, AR 72201-1094
501-682-2326 Phone; 501-682-1532 FAX

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Effective Date:

Classification Number:

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Jamie Ewing

Telephone: (501) 682-0918

Statutory Authority for Promulgating Rules: A. C. A. § 8-1-203(b)(1)

Title of Rule: Regulation No 34, State Water Permit Regulation; Docket No 10-008-R; Minute Order No. 11-22.

| Rule Status | Effective Date Status | Effective Date |
|---|--|--------------------|
| <input type="checkbox"/> New Rule/Regulation | <input type="checkbox"/> Emergency | |
| <input checked="" type="checkbox"/> Amended Rule/Regulation | <input checked="" type="checkbox"/> 10 Days after filing | September 26, 2011 |
| <input type="checkbox"/> Repealed Rule/Regulation | <input type="checkbox"/> Other | |
| <input type="checkbox"/> Order | <input type="checkbox"/> Repealed | |
| <input type="checkbox"/> Emergency Rule/Regulation | Adopted by State Agency | |

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Chris J. Murt

Date: September 16, 2011

Title: Administrative Hearing Officer

1/14/99

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 34

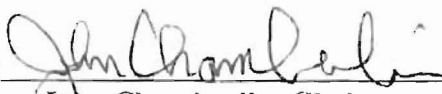
MINUTE ORDER NO. 10-22

Docket No. 10-008-R

PAGE 1 OF 1

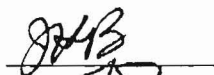



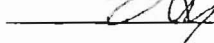
Pursuant to public notice and hearing, and in consideration of public comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts Regulation No. 34, State Water Permit Regulation.

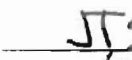
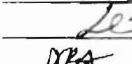

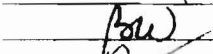


PROMULGATED THIS 26TH DAY OF AUGUST, 2011, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: 
John Chamberlin, Chairman

ATTEST: 
Teresa Marks, Director

COMMISSIONERS:

 J. Bates
 L. Bengal
____ S. Henderson
 D. Hendrix
 S. Jorgenson
 D. Samples

 J. Shannon
 L. Sickel
 J. Simpson
 W. Thompson
 B. White
 R. Young


J. Chamberlin, Chair

Submitted by: Jamie Ewing DATE PASSED: August 26, 2011



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL
SUITE 205
LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

September 28, 2011

Mr. Jon Davidson
The Arkansas Register
Secretary of State's Office
State Capitol, Room 026
Little Rock, Arkansas 72201

Re: Regulation No. 34, State Water Permit Regulation,
Docket No. 10-008-R - **SUBSTITUTED FILING**

Dear Mr. Davidson:

An error has been brought to my attention by the Commission Secretary. The Arkansas Department of Environmental Quality ("ADEQ") recently filed a petition to initiate a new regulation, Regulation No. 34. Following notice to the public, public hearing, and legislative review of the proposed new rule, the Arkansas Pollution Control and Ecology Commission ("Commission") adopted Regulation No. 34 at its August meeting. When the Regulation No. 34 package was provided to the Commission for filing with your office, ADEQ inadvertently included a Cover Sheet with an incorrect adoption date. Regulation No. 34, with the incorrect cover sheet, was filed with you on September 6, 2011.

I am providing you with one (1) hard copies of the corrected Regulation No. 34 cover page to correct that typographical error.

I appreciate your assistance in this matter and if you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Charles Moulton".

Charles Moulton
Administrative Hearing Officer

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STATE OF ARKANSAS

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL

SUITE 205

LITTLE ROCK, ARKANSAS 72201

PHONE: (501) 682-7890

FAX: (501) 682-7891



September 28, 2011

Ms. Mary Brewer
Government Documents
Arkansas State Library
1 Capitol Mall
Little Rock, Arkansas 72201

Re: Regulation No. 34, State Water Permit Regulation,
Docket No. 10-008-R - **SUBSTITUTED FILING**

Dear Ms. Brewer:

An error has been brought to my attention by the Commission Secretary. The Arkansas Department of Environmental Quality ("ADEQ") recently filed a petition to initiate a new regulation, Regulation No. 34. Following notice to the public, public hearing, and legislative review of the proposed new rule, the Arkansas Pollution Control and Ecology Commission ("Commission") adopted Regulation No. 34 at its August meeting. When the Regulation No. 34 package was provided to the Commission for filing with your office, ADEQ inadvertently included a Cover Sheet with an incorrect adoption date. Regulation No. 34, with the incorrect cover sheet, was filed with you on September 16, 2011.

I am providing you with fifteen (15) hard copies of the corrected Regulation No. 34 cover page to correct that typographical error.

I appreciate your assistance in this matter and if you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in cursive script, appearing to read "Charles Moulton".

Charles Moulton

Administrative Hearing Officer

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LITTLE ROCK, ARKANSAS 72201

PHONE: (501) 682-7890

FAX: (501) 682-7891



9/28/11
WB/BLR

September 28, 2011

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol
Little Rock, Arkansas 72201

Re: Regulation No. 34, State Water Permit Regulation,
Docket No. 10-008-R - **SUBSTITUTED FILING**

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I am providing you with two (2) hard copies of the corrected Regulation No. 34 cover page to correct that typographical error.

I appreciate your assistance in this matter and if you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in cursive script, appearing to read "Charles Moulton".

Charles Moulton

Administrative Hearing Officer