

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Department of Energy and Environment

Contact Michael McAlister E-mail mcalister@adeq.state.ar.us Phone 501-682-0918

Statutory Authority for Promulgating Rules Act 704 of the 93rd General Assembly

Rule Title: Rule 34, " State Water Permit Rule"

Intended Effective Date

(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published

☐ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

Adopted by State Agency

12/03/2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Peter Alberg

Peter.Alberg@adeq.state.ar.us

12/15/2021

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Chuck Moulton

Signature

501-682-7890

moulton@adeq.state.ar.us

Phone Number

E-mail Address

Administrative Law Judge

Title

12/13/2021

Date

ARKANSAS POLLUTION CONTROL
and ECOLOGY COMMISSION

~~RULE~~REGULATION NO.

34

State Water Permit

~~Rule~~Regulation



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

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Chapter 1 GENERAL PROVISIONS

RuleReg.34.101 Purpose

It is the purpose of this ~~rule~~~~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.

RuleReg.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 ~~Rule~~~~Regulation~~ No. 34.

RuleReg.34.103 Scope

This ~~rule~~~~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 ~~rule~~~~regulation~~ does not apply to liquid animal waste management systems regulated under APC&EC ~~Rule~~~~Regulation~~ 5 or underground injection control (UIC) facilities regulated under APC&EC ~~Rule~~~~Regulation~~ 17 or Class II UIC wells permitted by the ~~Arkansas~~ Oil and Gas Commission. This ~~rule~~~~regulation~~ also does not apply to storage or disposal systems permitted under APC&EC ~~Rule~~~~Regulation~~ 1 or ~~R u l e~~ ~~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.

RuleReg.34.104 Definitions

The following definitions apply to this ~~Rule~~~~Regulation~~:

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

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

“~~Director~~” means the Director of the ~~Arkansas Division~~~~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 ~~rule~~ **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 **rules and** 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

RuleReg.34.201 Pits covered by this **RuleRegulation** 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.

RuleReg.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 ~~Rule~~~~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 ~~Rule~~~~Regulation~~ may be subject to ~~A~~DEQ 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

~~RuleReg-~~34.601 Penalty Policy and Administrative Procedures

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

~~RuleReg-~~34.602 Severability

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

Chapter 7 EFFECTIVE DATE

RuleReg. 34.701 **Effective Date**

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

ARKANSAS POLLUTION CONTROL
and ECOLOGY COMMISSION

RULE NO. 34
State Water Permit Rule



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

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Chapter 1 GENERAL PROVISIONS

Rule 34.101 Purpose

It is the purpose of this rule 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.

Rule 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 Rule No. 34.

Rule 34.103 Scope

This rule 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 rule does not apply to liquid animal waste management systems regulated under APC&EC Rule 5 or underground injection control (UIC) facilities regulated under APC&EC Rule 17 or Class II UIC wells permitted by the Oil and Gas Commission. This rule also does not apply to storage or disposal systems permitted under APC&EC Rule 1 or Rule 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.

Rule 34.104 Definitions

The following definitions apply to this Rule:

“**DEQ**” or “**Division**” means the Division of Environmental Quality, or its successor.

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

“**Director**” means the Director of the Division 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 rule.

"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 rules and regulations and conditions.

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- (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 Rule if the Owner or Operator is in full compliance with Rule B-17, as adopted by the 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 Rule may be subject to DEQ 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

Rule 34.601 Penalty Policy and Administrative Procedures

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

Rule 34.602 Severability

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

Chapter 7 EFFECTIVE DATE

Rule 34.701 Effective Date

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

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Approval
of Amendments to APC &
EC Rules**

Docket No. 21-003-MISC

MINUTE ORDER NO. 21- 18

Pursuant to Act 704 of the 93rd General Assembly, the Arkansas Pollution Control and Ecology Commission hereby grants and approves the Division of Environmental Quality's Motion to Approve Rule Amendments, and approves the amendments to rules which are specifically set forth and contained in the mark-up drafts of rules provided to the Commission with the above-referenced motion; that further, the Commission orders that the existing effective date of each rule shall remain the same and that no substantive changes to these rules are promulgated or intended by these amendments.

**THIS 3RD DAY OF DECEMBER, 2021, BY ORDER OF THE ARKANSAS
POLLUTION CONTROL AND ECOLOGY COMMISSION.**

COMMISSIONERS:

<u>SUA</u>	S. Ausbrooks
<u>AB</u>	L. Bengal
<u>CC</u>	C. Colclasure
<u>JSF</u>	J. Fox
<u>MNG</u>	M. Goggans
	R. McMullen

<u>D.A. by 11</u>	D. Melton
<u>RM</u>	R. Moss, Jr.
<u>RR</u>	R. Reynolds
<u>R</u>	R. Roper
<u>D</u>	D. Vandergriff
<u>WWW</u>	W. Ward

10.27.21 **SUBMITTED BY: Michael McAlister DATE PASSED: 12/03/21**
R. Roper, Chair