

# EXHIBIT E

## DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF LAND RESOURCES

### **SUBJECT: Regulation 36: Tire Accountability Program**

**DESCRIPTION:** The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for permanent amendments to emergency Regulation No. 36 (Used Tire Recycling and Accountability Program). The proposed amendments simplify the name of the program to the Tire Accountability Program (TAP); provide 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; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation. Act 317 of 2017 also establishes the Commission’s authority for the rulemaking.

In addition to the changes described above made throughout the emergency Regulation 36, a summary of proposed changes by chapter include:

***Chapter 1: General Provisions*** – Changes made to this chapter include:

Reg. 36.101 was changed by adding subsection (C);

Reg. 36.102 was changed by adding subsection (A);

Reg. 36.106 entitled “Open Burning Prohibited” was stricken;

Reg. 36.107 entitled “Continuation of Permitting, Licensing, and Enforcement Authority” under Regulation No. 14 was stricken because it will no longer be necessary after this permanent rulemaking is effective;

New Reg. 36.106 was added concerning inter-district used tire programs; and

New Reg. 36.107 was added concerning market development.

***Chapter 2: Definitions*** – Changes to the definition of e-manifest were made.

***New Chapter 3: Used-Tire Programs*** – Added to provide information related to the administration of used-tire programs.

***Chapter 4: Used-Tire Program Accountability and Business Plans*** – Reg. 36.403 was changed by striking subsection (B).

***New Chapter 5: Performance and Efficiency Evaluations*** – Added for administrative guidance.

***Chapter 6: E-Manifest System*** – The current “Chapter 4: E-Manifest System” has been renumbered as Chapter 6 with additional changes to Reg. 36.602, 36.605, and Reg. 36.606.

***Chapter 7: Tire Generators*** – The current “Chapter 5: Tire Generators” has been renumbered as Chapter 7 with additions to Reg. 36.704(7).

**Chapter 8: Rim Removal Fees** – The current “Chapter 6: Rim Removal Fees” has been renumbered as Chapter 8.

**Chapter 9: Commercial Generators and Commercial Generator Fees** – The current “Chapter 7: Commercial Generators and Commercial Generator Fees” has been renumbered as Chapter 9.

**Chapter 10: Persons Who Import Used Tires and Import Fees** – The current “Chapter 8: Persons Who Import Used Tires and Import Fees” has been renumbered as Chapter 10.

**Chapter 11: Disbursements from the Used Tire Recycling Fund** – The current “Chapter 9: Disbursements from the Used Tire Recycling Fund” has been renumbered as Chapter 11.

**New Chapter 12: Beneficial Use** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.

**New Chapter 13: Waste Tire Sites** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.

**New Chapter 14: Landfilling of Waste Tires** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.

**New Chapter 15: Tire Collection Centers** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.

**New Chapter 16: Tire Processing Facilities** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.

**New Chapter 17: Repealer, Severability, and Effective Dates** – Standard language included in most permanent regulations.

**PUBLIC COMMENT:** This rule was reviewed and approved by the Executive Subcommittee at its meeting of March 5, 2018, for emergency promulgation. With respect to permanent promulgation, a public hearing was held on February 27, 2018. The public comment period expired on March 15, 2018. The Department provided the following summary of the public comments that it received and its responses thereto:

**Melinda Caldwell, Director, Ozark Mountain Solid Waste District**

**Comment 1** Please receive these comments concerning Regulation No. 36. Consideration is appreciated in the following language change in the areas of the proposed Regulation No. 36 as listed below:

“Use the manifest system developed by ADEQ and certify each tire removed from the rim and replaced with a new or used tire was assessed a rim removal fee.”

APC&EC Regulation No. 36.704(6)  
APC&EC Regulation No. 36.705(A)(5)  
APC&EC Regulation No. 36.706(6)  
APC&EC Regulation No. 36.707(C)  
APC&EC Regulation No. 36.708(6)  
APC&EC Regulation No. 36.710(6)

**Response:** ADEQ agrees and has made the changes to the Revised Markup Draft that was suggested for all the Reg. 36 cites listed above in a manner that is consistent with the defined terminology in Chapter 2.

**Craig Douglass, Executive Director, Regional Recycling & Waste Reduction District**

**Comment 2** Please accept this letter as a request for consideration to revise Regulation No. 36, specifically 36.114 Administrative Incentive Grants, subsection (B).

Our particular interest is in the area market and economic stimulus incentives. This regulation states that the Director has discretion on the use of Used Tire Recycling Fund monies for the provision of grants for market and economic stimulus incentives, and that those grants are limited to applications from an eligible used-tire program, local government, or state agency, board or commission. We would respectfully request that an additional category of eligible applicants be considered:

(4) An Arkansas non-profit corporation whose mission is dedicated to recycling-related programs.

Our reasoning is this. In the course of developing more cohesive, inter-related and effective recycling programs for the state of Arkansas, we have recognized the need for research, education, program testing, promotion and inter-district implementation. In order to develop programs with the greatest opportunity to positively impact the entire state, and the statewide protection of the public health and environment, the recruitment of and support by private industry is essential. This recognition further incorporates environmental programs, particularly recycling and the beneficial use of recyclable material, into an overall economic development strategy, rather than simply a regulatory one.

We believe that allowing Arkansas non-profit corporations whose mission incorporates the opportunity for the above strategy could be helpful. And we recommend this category of possible applicants to you for the development of effective and efficient market and economic stimulus incentives.

**Response:** Reg. 36.1114(B) concerns eligible applicants for Administrative and Incentive Grants. Effective January 1, 2018, Ark. Code Ann. § 8-9-405(a) requires ADEQ to establish a Program to reimburse used-tire programs (UTPs). The Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., only allows ADEQ to disburse moneys to used-tire programs. The moneys collected for the Tire Accountability Program are deposited in the Used Tire Recycling Fund, and the use of those funds are restricted by law under Ark. Code Ann. § 19-5-1147(c). Reg. 36.1114(B) defines those eligible for

an abatement aid grant or market and economic stimulus incentive grant to include an eligible UTP, a local government, or a state agency, board, or commission. Reg. 36.1115(B) does make reference to the applicant or their contractor. Reg. 36, as proposed, allows a UTP to solicit the assistance of a contractor that could be a non-profit organization.

**Wendy Bland, Executive Director, Benton County Solid Waste District**

The Benton County Regional Solid Waste Management District appreciates the opportunity to submit the following comments on the proposed revision to Regulation No. 36.

**Comment 3** Regarding 36.107, the BCRSWMD requests that PC&E consider adding language requiring ADEQ Tire Accountability Program staff to prepare and publish a quarterly report indicating the Department's efforts made in developing market opportunities for recycling and beneficial use. This is a critical activity and we would like to see accountability for the Department's role in this activity.

**Response:** ADEQ agrees the efforts to develop market opportunities for recycling and beneficial use are critical to the overall success of the program. ADEQ is developing a statewide marketing plan to supplement the Arkansas Economic Development Commission (AEDC) review of Arkansas Tire Management District Used Tire Processing dated September 21, 2017. This statewide marketing plan is to serve as a tool to the UTPs to assist with compliance of Reg. 36.107. Ark. Code Ann. § 8-9-405(h) requires ADEQ to develop market opportunities for beneficial use of used tire material and educate the public on the Program. Ark. Code Ann. § 8-9-401(c)(3) states the primary goal of the UTP is to recycle or put to beneficial use as many used tires as possible.

**Comment 4** Regarding 36.1110(B), requires a Reimbursement Request form to be submitted by the UTPs within 5 days after end of quarter. We request PC&E consider removing all reference to a Reimbursement Request form. We feel there is no reason for a separate form as all required information could be provided on the Quarterly Report form.

**Response:** The Reimbursement Request form referenced in Reg. 36.1110(B) is the Quarterly Report form TAP-9. A reference to the Quarterly Report form TAP-9 is being added to Reg. 36.1110(B) to clarify there is only one report form required to be submitted by the UTP for reimbursement. The Quarterly Report will be due within thirty (30) calendar days after the last day of each quarter.

Reg. 36.1110(B)(1) has been amended to read "A used-tire program shall submit to ADEQ a Quarterly Report no later than thirty (30) calendar days after the last day of each calendar quarter on Form TAP-9 to include:

- (a) A statement that all information has been submitted to the e-manifest system or an explanation of any discrepancy reports related to e-manifest system data; and
- (b) If applicable, documentation that supports its explanation of any discrepancy report during that calendar quarter."

Reg. 36.1110(C) has been amended to read “ADEQ shall evaluate the Quarterly Reports and may use any of the following additional sources to determine Level One funding reimbursements to eligible used-tire programs:

- (1) Data from the e-manifest system including the quantity of used tires managed and any data related to the verification of the claimed quantity of used tires managed;
- (2) Quarterly progress reports;
- (3) Approved business plan rates;
- (4) Total reimbursement requests from all used-tire programs; and
- (5) Total available funding for quarterly disbursements.”

**Comment 5** Regarding 36.1301, we request PC&E consider adding a subsection (C) to include critical prohibitions similar to that found in Reg. 14.702 related to improper management of used or waste tires.

**Response:** Critical prohibitions for waste tire sites have been added to Reg. 36.1301 similar to those found in Reg. 14.702. The following has been added as Reg. 36.1301(C): “A person shall not transport, transfer, store, collect, recycle, or otherwise manage used tires, processed tires, or residuals in any manner that:

- (1) Creates a nuisance;
- (2) Breeds or harbors mosquitos, snakes, insects, rodents, or other disease-causing vectors;
- (3) Causes a discharge of any constituent derived from used tires into the air or waters of the State unless permitted otherwise by ADEQ; or
- (4) Creates other hazards to public health, safety, or the environment as determined by ADEQ.”

**Comment 6** The BCRSWMD believes that ADEQ is over-stepping their authority by requiring a Professional Engineer to sign off on the Collection Center Permit application (TAP-6). This is not mandated in the proposed Regulation 36 nor in the law. We request that PC&E amend 36.1503(A) to define the minimum requirements for obtaining a collection center permit. We further request that separate categories and requirements be defined for a collection center versus only a collection trailer.

We deeply appreciate the Commission and ADEQ’s consideration of these comments and suggested revisions.

**Response:** Form TAP-6 has been amended to reflect that the Professional Engineer certification is required for tire processing facilities when the tire collection center’s tire storage area is outside on the ground or a concrete pad and not in a building. The intent for requiring an engineering certification under these circumstances is to ensure there is appropriately designed storm water run-on and run-off measures in place.

Reg. 36.1502 defines the criteria and entities that need a tire collection center general permit.

Reg. 36.1508 covers the storage, technical, and operational criteria of tire collection centers whether the tires are collected and stored in a trailer, concrete pad, or another approved storage area.

**Wendy Bland, President, Arkansas Association of Regional Solid Waste Management Districts**

The Arkansas Association of Regional Solid Waste Management Districts appreciates the opportunity to comment on the proposed Revision to Regulation No. 36.

We would like the PC&E Commission to know that all of the 18 Solid Waste Districts, and subsequent Used Tire Programs, are united in the common goal of trying to make this legislation into a successful used tire program for the state. We share ADEQ's desire to create and maintain a positive working relationship. We look forward to continuing to work with the Commission and ADEQ to operate an efficient and cost effective tire collection and processing program.

**Comment 7** We would like to express our concern that the Commission allowed ADEQ staff to adopt, through a 2<sup>nd</sup> Emergency Rulemaking process, the proposed final version of Regulation 36. In essence, this immediately implemented all the requirements contained in the proposed final Regulation 36 before any public comments were considered. While ADEQ did facilitate a stakeholder process during fall 2017 for development of an initial version of Regulation 36, the final draft contains many changes, insertions and deletions which differ significantly from the version of the Regulation which was presented to stakeholders.

It is vitally important that, in the future, the department consult the districts regarding any proposed change to current solid waste regulations and laws prior to beginning rulemaking or legislation. The 18 solid waste districts and our mayors and judges fulfill the work of the solid waste system in this state. District personnel have operational experience and real-world knowledge. We are ready and willing to offer our expertise to create and operate the most efficient system.

It is also important to understand that, as a united group of districts, we must ensure that the needs and the best interests of our constituents and elected officials are considered. Therefore, if we feel that the needs of our citizens are not being met, we will not hesitate to work with our mayors and judges, their associations and the legislature to effect the necessary change.

**Response:** The Department acknowledges the comment.

**Comment 8** Regarding 36.107, the Association requests that PC&E consider adding language requiring ADEQ Tire Accountability Program staff to prepare and publish a quarterly report indicating the Department's efforts made in developing market opportunities for recycling and beneficial use. This is a critical activity and we would like to see accountability for the Department's role in this activity.

**Response:** ADEQ agrees the efforts to develop market opportunities for recycling and beneficial use are critical to the overall success of the program. ADEQ is developing a statewide marketing plan to supplement the Arkansas Economic Development Commission (AEDC) review of Arkansas Tire Management District Used Tire Processing dated September 21, 2017. This statewide marketing plan is to serve as a tool

to the UTPs to assist with compliance of Reg. 36.107. Ark. Code Ann. § 8-9-405(h) requires ADEQ to develop market opportunities for beneficial use of used tire material and educate the public on the Program. Ark. Code Ann. § 8-9-401(c)(3) states the primary goal of the UTP is to recycle or put to beneficial use as many used tires as possible.

**Comment 9** Regarding 36.307(A), this regulation states that a UTP is subject to penalties for noncompliance including (1) failure to submit a business plan on or before December 31, 2018. However, all UTPs have already submitted and been granted conditional approval of the business plans. Future business plans would only be required under specific circumstances described in Chapter 4 and would not be required on the proposed date. We request that PC&E remove the date of December 31, 2018, to allow this section to apply to future revisions and plans that may be submitted. We suggest replacing with “as required in Chapter 4 of this Regulation.”

**Response:** Reg. 36.307(A)(1) has been amended to read “Failure to submit a business plan as required in Chapter 4 of this regulation.”

**Comment 10** Regarding 36.307(A)(13), a requirement has been added for Used Tire Programs (UTPs) to provide a Disclosure Statement. However, the disclosure statement is not required of government agencies. The Association requests that PC&E strike 36.307(A)(13) since this applies only to UTPs.

**Response:** Reg. 36.307(A)(13) has been deleted since the disclosure statement is not required to be submitted by the UTPs. The remaining items in Reg. 36.307(A) have been renumbered accordingly.

**Comment 11** Regarding 36.308(A), refer to comment above pertaining to 36.307(A). We request removing the dates to allow this section to apply to future revisions and plans that may be submitted.

**Response:** All dates have been removed in Reg. 36.308 to reflect a regulatory requirement pertaining to penalties that could be imposed if a UTP fails to submit a revised business plan.

**Comment 12** Regarding 36.401, this section refers to Initial Business Plans and includes a date that has passed as well. We suggest removing 36.401 in entirety. We request moving the requirements for District Board approval of business plans to 36.404(A).

**Response:** Reg. 36.401 has been amended by removing the dates and listing of specific calendar years. Reg. 36.401 now reads “A used-tire program that receives funding from the Used Tire Recycling Fund shall have an ADEQ-approved business plan that establishes its current operation expenses and proposed future operation plans. This business plan must be approved by the used-tire program’s board before submittal to ADEQ.”

**Comment 13** Regarding 36.1110(B), requires a Reimbursement Request form to be submitted by the UTPs within 5 days after end of quarter. First, we request PC&E consider removing all reference to a Reimbursement Request form. ADEQ Tire Accountability Program staff have indicated that they consider the Quarterly Report form to be the same as the Reimbursement Request form. We feel there is no reason for a separate form as all required information could be provided on the Quarterly Report form.

If PC&E determines that a separate Reimbursement Request form is necessary, we request that PC&E consider amending both 36.1110(B)(1) and (2) to state that the Reimbursement Request form will be submitted within 30 days after the end of the quarter.

**Response:** See response to Comment 4 above.

**Comment 14** 36.1113(C) states that the Reimbursement Request will not be considered by ADEQ until the Quarterly Report is filed within 30 days after end of quarter.

**Response:** See response to Comment 4 above.

**Comment 15** Regarding 36.1301, we request PC&E consider adding a subsection (C) to include critical prohibitions similar to that found in Reg. 14.702 related to improper management of used or waste tires.

**Response:** See response to Comment 5 above.

**Comment 16** Regarding 36.1501(A), the regulation proposes that every collection center must be access-controlled and “only allow entry through specific points by authorized personnel.” In the September 2017 PC&E-adopted version of Regulation 36, there was an additional allowance for “Open collection center” which is a location where used tires are collected without the requirement of being attended by authorized personnel. It was the understanding of the UTPs that this dual system would remain in effect in the final regulation.

Several UTPs currently have un-manned collection trailers strategically placed around their Districts for the convenient collection of used tires from their citizens. As a result, the affected UTPs did not include the extra costs of staffing every collection center in their submitted business plans. Many of these collection centers are in very remote locations and will require significant man-hours to adequately provide convenient collection from the citizens of that area.

The Association requests that PC&E consider a delay in implementing the requirement for Access Control on each location until 2019. This will allow time for the UTPs to amend their business plans as necessary to allow time for ADEQ staff to review and approve the revised plans. We also request that the ADEQ Director be allowed to extend the implementation deadline in the event that adequate funds are not available for increased business plan rates.

**Response:** During the process of developing the draft of final proposed Reg. 36, it was determined that since the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., requires shipments of tires to tire collection centers to be manifested as a measure of accountability, tire collection centers needed to be access-controlled. However, Reg. 36.1501(B), as proposed, does contain an allowance for a UTP board to request a one-time exception to ADEQ granting them the ability to establish an open-collection center for special non-profit or household collection events. Reg. 36.1501(B) is being amended to read “A board may establish annually a one-time event for a temporary open-collection center for non-profit or household collection events. Any additional events the board wants to establish that same calendar year must be approved by the



Director. The approved length of time to operate a temporary open-collection center will be determined on a case-by-case basis.”

ADEQ acknowledges many of the UTPs’ tire collection centers are located in rural areas. ADEQ also acknowledges access-controlled tire collection centers require personnel to man these locations which incur personnel expenses. For this reason, ADEQ encourages the districts to coordinate with available manned county facilities as a viable location for the required access-controlled tire collection centers. ADEQ has only issued conditional approval of the current business plan rates and conducted outreach to UTPs expressing to them if they needed to make amendments to their business plans due to regulatory requirements such as this, they could propose amendments to ADEQ. As a matter of record, several UTPs have already taken these measures and received adjusted business plan rates.

Ark. Code Ann. § 8-9-407(a)(3) requires the use of manifests to report all information related to the collection, transportation, distribution, and recycling or disposal of recyclable tires, waste tires, and used tires culled for resale by tire collection centers and the need for accountability for accurate reimbursement.

**Comment 17** 36.1506(B)(2) requires a weekly inspection of every collection center. Many of these collection centers are operated on behalf of the UTPs by counties and/or cities or are in very remote locations. The requirement for weekly inspections will cause a hardship for many UTPs. We request that PC&E consider amending 36.1506(B)(2) to require a monthly inspection of the collection centers.

**Response:** Reg. 36.1506(B)(2) has been changed to require monthly inspections of the tire collection centers.

**Comment 18** Regarding 36.1610, there is a requirement that all Tire Processing Facilities now submit a Disclosure Statement. However, many of the Tire Processing Facilities are owned and operated by a Used Tire Program, which is a government entity and not required to file Disclosure Statements. We request that PC&E consider amending 36.1610 to add the words “unless exempt.”

**Response:** Reg. 36.1610 has been amended to read: (A) Except as provided under subsection (B) of this section, the applicant shall file a disclosure statement at the time the application is submitted. (B) The following entities are exempt from filing a disclosure statement under this section:

- (1) The federal government;
- (2) Other state government agencies, boards, and commissions;
- (3) Local governments including counties, cities, and municipalities; and
- (4) Regional solid waste districts authorized under the laws of the State of Arkansas.

**Comment 19** The Association believes that ADEQ is over-stepping their authority by requiring a Professional Engineer to sign off on the Collection Center Permit application (TAP-6). This is not mandated in the proposed Regulation 36 nor in the law. We request that PC&E amend 36.1503(A) to define the minimum requirements for obtaining a collection center permit. We further request that separate categories and requirements be defined for a collection center building versus only a collection trailer.

We deeply appreciate the Commission and ADEQ's consideration of these comments and suggested revisions.

**Response:** See response to Comment 6 above.

**Jan Smith, Executive Director, White River Regional Solid Waste Management District**

The White River Regional Solid Waste Management District is submitting the following comments regarding Regulation 36. We support the comments provided by the Arkansas Association of Regional Solid Waste Management Districts that were submitted March 14<sup>th</sup>. There are specific comments that we want to include.

**Comment 20** Regulation 1501(A) We were told at stakeholder meetings by ADEQ personnel that open collection centers would be allowed. In rural Arkansas these are standard methods of collection. The purpose of collection centers is to collect waste tires so that they are not dumped along the roadside, in ditches and ravines, or left in unattended areas. They have served our District well over the past twenty five years. They have helped us prevent illegal dumping and other problems within our counties. We have 54 26-foot long open trailers that are placed in convenient places for the collection of waste tires. Some serve local dealers only, others are at designated collection sites, and others are dropped at locations upon request for short time periods. The cost of creating access-controlled sites with entry through specific points by authorized personnel will increase our costs significantly, encourage illegal dumping and create additional problems for the used tire program. We have proven situations where access-controlled sites do not solve any accountability issues or prohibit access. One access-controlled site we currently have in Batesville at a local tire dealer has illustrated that this does not work. The site has an 8 foot fence around the trailer which is locked. At night the site is either accessed by climbing the fence, by cutting the fence or just leaving tires piled up outside the fence. They will back a truck up to the fence and climb from the bed of the truck into the fenced area to the trailer. This is not an isolated site but is located at an intersection of the main highway through town and another highway. We request that we be allowed to continue our sites that work well for us. If people want access they will get access.

In our most rural counties we have minimal choices for access controlled sites. We have handled some of the cases by taking a trailer to a specific tire dealer for several days and allowing tires to be collected until the trailer is full. These pick up events might happen once or twice a year. There is not enough business to create the need for full time trailer to be sited. Our collection program has evolved over time and the decisions used are based on best practices learned for that county.

**Response:** See response to Comment 16 above.

**Comment 21** Regulation 36.1501(B) The Used Tire Program Board should not be required to petition ADEQ to conduct a temporary open-collection center for events. County collections and other type collection events should be at the discretion of the Board. This adds a time consideration and burden on the UTP.

**Response:** The Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., requires ADEQ to establish a program that is accountable and sustainable. Reg. 36.1501(B) is being amended to read “A board may establish annually a one-time event for a temporary open-collection center for non-profit or household collection events. Any additional events the board wants to establish that same calendar year must be approved by the Director. The approved length of time to operate a temporary open-collection center will be determined on a case-by-case basis.”

**Comment 22** Regulation 36.1506(B)(2) Since our collection sites are served by a 26-foot long trailer the need for weekly inspections is excessive. We request that it be revised to address the type of site. If the site is only a trailer the site should be inspected less frequently such as quarterly. We do not have collection sites where tires are stacked on the ground. We also request a minimum tire number be included before a collection center permit is required as it was in Regulation 14. When the collection site is only one trailer with a maximum capacity of 400 tires, it is a burden to have a permit.

**Response:** Reg. 36.1506(B)(2) has been amended to require monthly inspections of the tire collection centers. Ark. Code Ann. § 8-9-405 does not include a minimum tire quantity before a tire collection center permit would be required. Reg. 36.1508 contains provisions for a permitted tire collection center to collect a maximum of five thousand (5,000) loose tires or a maximum of ten thousand (10,000) compacted and baled tires at each permitted site.

**Comment 23** Regulation 3.1508 A storm water permit should not be required for an open-top container or trailer. Tarping the trailer or putting it under a structure is a burdensome requirement when tires are designed to be out in the weather. Water touching waste tires is not an environmental hazard.

We appreciate your consideration of our comments in addition to the comments submitted by the Arkansas Association of Regional Solid Waste Management Districts.

**Response:** Reg. 36.1508(B)(1)(d)(ii), as proposed, reads “if an open-top container or trailer is used as a tire storage area at a tire collection center, a storm water permit will not be required if the container or trailer is covered with a tarp or placed under some type of constructed cover during inclement weather or when the business is closed.”

Accumulated water in a trailer or open-top container of tires could create a breeding ground for vector-type diseases.

Reg. 36.1508(B)(1)(c) has been amended to read “Storm water control methods shall comply with all applicable federal and state laws, regulations, rules, and permits.” This criterion applies to sections such as Reg. 36.1508(B)(1)(d)(iii) which has been amended to read “If the tire storage area is open, uncovered, or not enclosed on all sides of the container or trailer, a storm water permit may be required unless written notice is received from the Department that a permit is not required.”

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Reg. 36.302 – Regulation 36.302 appears to be premised upon the provisions of Arkansas Code Annotated § 8-9-405(b), but the regulation appears to lack the provision of Ark. Code Ann. § 8-9-405(b)(10). That said, similar language to that omitted is found in Reg. 36.1501(A). Is that the reason the language was not included in Reg. 36.302? **RESPONSE:** Yes, 8-9-405(b)(10) is referring to Tire Collection Centers. Thus, the provisions of 8-9-405(b)(10) were listed in Chapter 15 of proposed Regulation No. 36.

(2) Reg. 36.305 – It appears that Arkansas Code Annotated § 8-9-414(b)(7) allows the Commission to establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee, but provides that the maximum number of tires under this provision “shall not be more than four (4) tires per month.” Ark. Code Ann. § 8-9-414(b)(7)(B). Regulation 36.305, however, appears to allow a used-tire program to accept more than four (4) used tires of any size per month without an additional fee under certain circumstances. Can you reconcile this for me? **RESPONSE:** Regulation No. 36.305 does contain a provision to allow a used-tire program to accept more than the four (4) used tires of any size each month without an additional fee under certain circumstances. Those circumstances are defined in Regulation No. 36.305(B). Arkansas Code Annotated § 8-9-414(b)(7)(A) is referring to a resident. Because the premises of Act 317 is to also encourage voluntary recycling, reuse, and long-term sustainability, a provision is proposed in Regulation No. 36.305(B) allowing volunteer group activities or government entities to be able to bring “clean up” tires to their district in a quantity greater than four (4). In turn, the Department will disburse funds to the district under an approved business plan rate provided the District does not charge a fee. This also lends support of getting tires removed from unwanted locations and limiting risk of potential exposure to the surrounding communities.

The proposed effective date is pending legislative review and approval.

**FINANCIAL IMPACT:** There is no financial impact. Any implementation cost for the rule is funded by tire fees that are required to be collected under Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., and are collected as special revenue. Available funding for the program is limited to the special revenues collected.

**LEGAL AUTHORIZATION:** The instant rulemaking continues the implementation of Act 317 of 2017, sponsored by Representative Lanny Fite, which created the Used Tire Recycling and Accountability Program. Pursuant to Arkansas Code Annotated § 8-9-414(a), as amended by Act 317, § 1, the Arkansas Pollution Control and Ecology Commission (“Commission”) shall promulgate regulations to carry out the intent and purposes of the Used Tire Recycling and Accountability Act (“Act”), codified at Ark. Code Ann. §§ 8-9-401 through 8-9-415, as amended by Act 317, § 1. The regulations shall: (1) provide for the administration of permits for tire processing facilities, tire collection centers, commercial generators, and any other person or entity that collects, receives, processes, recycles, or disposes of used tires regulated under the Act with the maximum permit fee not to exceed two hundred fifty dollars (\$250) annually;<sup>1</sup> (2)

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<sup>1</sup> The maximum permit fee shall not apply to tire transporters. See Ark. Code Ann. § 8-9-414(b)(1)(B), as amended by Act 317, § 1.

establish standards for tire processing facilities, tire collection centers, tire transporters, and beneficial use projects; (3) establish procedures for administering reimbursements to used tire programs under Ark. Code Ann. § 8-9-405; (4) unless otherwise provided by law, authorize the final disposition of waste tires at a permitted solid waste disposal facility if the waste tires have been cut into sufficiently small parts for proper disposal and in compliance with the Act and all other applicable provisions in Title 8 of the Arkansas Code; (5) establish procedures for administering the electronic uniform used tire manifest system; (6) establish accountability procedures for the sustainability of used tire programs operated under the Act; and (7) establish the number of tires that each individual who is a resident of a regional solid waste management district may discard monthly without a fee.<sup>2</sup> *See* Ark. Code Ann. § 8-9-414(b)(1)–(7), as amended by Act 317, § 1. The Commission may: (1) develop an alternative tire transporter licensing program to be administered by used tire programs, regional solid waste management boards, or both; (2) promulgate regulations that are necessary to administer the fees and reimbursement rates for services provided under the Act by the used tire programs; and (3) clarify and add definitions for sizes of tires using technical information and specifications. *See* Ark. Code Ann. § 8-9-414(c)(1)–(3), as amended by Act 317, § 1. The Commission shall additionally encourage the establishment of voluntary tire collection centers where used tires generated in Arkansas can be deposited, which shall include without limitation tire retailers, tire processing facilities, and solid waste disposal facilities, but shall not include the collection of tires generated by a tire manufacturer. *See* Ark. Code Ann. § 8-9-414(d)(1)–(3), as amended by Act 317, § 1. Finally, the Commission shall not prohibit the disposal of waste tires in landfills or monofills for three (3) years from August 1, 2017. *See* Ark. Code Ann. § 8-9-414(e), as amended by Act 317, § 1.

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<sup>2</sup> The maximum number of tires under this provision shall not be more than four (4) tires per month. *See* Ark. Code Ann. § 8-9-414(b)(7)(B), as amended by Act 317, § 1.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

Arkansas Department of Environmental Quality (ADEQ) by and through the Arkansas Pollution Control and Ecology Commission

**DEPARTMENT/AGENCY** (APC&EC)

**DIVISION** Office of Land Resources (OLR)

**DIVISION DIRECTOR** Kevin White, Associate Director

**CONTACT PERSON** Kevin White, Associate Director, Office of Land Resources

**ADDRESS** 5301 Northshore Drive, North Little Rock, Arkansas

**PHONE NO.** 501-682-0962 **FAX NO.** 501-682-0565 **EMAIL** white@adeq.state.ar.us

**NAME OF PRESENTER AT COMMITTEE MEETING** Kevin White

**PRESENTER EMAIL** white@adeq.state.ar.us

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201**

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1. What is the short title of this rule? Regulation No. 36: Tire Accountability Program

The proposed permanent amendments simplify the name of the program to the Tire Accountability Program (TAP); provide 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; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation.

2. What is the subject of the proposed rule? \_\_\_\_\_

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. N/A

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq.

7. What is the purpose of this proposed rule? Why is it necessary?  
The purpose of this regulation is to provide for the administration of the new Tire Accountability Program. It is necessary because the General Assembly made substantial changes to the current program and transferred the current waste tire program to the new program Tire Accountability Program.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).  
[www.adeq.state.ar.us/regs/draft\\_regs.aspx](http://www.adeq.state.ar.us/regs/draft_regs.aspx)

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Environmental Quality (ADEQ) by and through the Arkansas Pollution Control and Ecology Commission (APC&EC)

**DIVISION** Office of Land Resources (OLR)

**PERSON COMPLETING THIS STATEMENT** Kevin White, Associate Director, OLR

**TELEPHONE** (501) 682-0962 **FAX** (501) 682-0565 **EMAIL:** white@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** APC&EC Regulation No. 36: Used Tire Recycling and Accountability Program

- 1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
  
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
  
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
N/A
  
- (b) The reason for adoption of the more costly rule;  
N/A
  
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
N/A
  
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>

General Revenue	<u>\$ 0.00</u>
Federal Funds	<u>\$ 0.00</u>
Cash Funds	<u>\$ 0.00</u>
Special Revenue	<u>\$ 0.00</u>
Other (Identify)	<u>\$ 0.00</u>



Total \$0.00

Total \$0.00

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue	\$ 0.00
Federal Funds	\$ 0.00
Cash Funds	\$ 0.00
Special Revenue	\$ 0.00
Other (Identify)	\$ 0.00
Total	\$ 0.00

General Revenue	\$ 0.00
Federal Funds	\$ 0.00
Cash Funds	\$ 0.00
Special Revenue	\$ 0.00
Other (Identify)	\$ 0.00
Total	\$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. \_\_\_\_\_.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 000000

\$ 000000

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0.00

\$ 0.00

Any implementation cost for the rule is funded by tire fees that are required to be collected under Act 317 of 2017, the Used Tire Recycling and Accountability Act, Ark. Code Ann. § 8-9-401 et seq., and are collected as special revenue. Available funding for the program is limited to the special revenues collected.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more \_\_\_\_\_ of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**APC&EC REGULATION NO. 36:**  
**USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM**  
Proposed Amendments – Executive Summary  
January 12, 2018

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for permanent amendments to emergency Regulation No. 36 (Used Tire Recycling and Accountability Program). The proposed amendments simplify the name of the program to the Tire Accountability Program (TAP); provide 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; remove preliminary implementation dates and deadlines that reference 2017; add references to new or renamed forms; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the emergency regulation. Act 317 of 2017 also establishes the Commission’s authority for the rulemaking.

In addition to the changes described above made throughout the emergency Regulation 36, a summary of proposed changes by chapter include:

- **Chapter 1: General Provisions** – Changes made to this chapter include:
  - Reg. 36.101 was changed by adding subsection (C);
  - Reg. 36.102 was changed by adding subsection (A);
  - Reg. 36.106 entitled “Open Burning Prohibited” was stricken;
  - Reg. 36.107 entitled “Continuation of Permitting, Licensing, and Enforcement Authority” under Regulation No. 14 was stricken because it will no longer be necessary after this permanent rulemaking is effective
  - New Reg. 36.106 was added concerning inter-district used tire programs; and
  - New Reg. 36.107 was added concerning market development.
- **Chapter 2: Definitions** – Changes to the definition of e-manifest were made.
- **New Chapter 3: Used-Tire Programs** – Added to provide information related to the administration of used-tire programs.
- **Chapter 4: Used-Tire Program Accountability and Business Plans** – Reg. 36.403 was changed by striking subsection (B).

**APC&EC REGULATION NO. 36:**  
**USED TIRE RECYCLING AND ACCOUNTABILITY PROGRAM**  
Proposed Amendments – Executive Summary  
January 12, 2018

- ***New Chapter 5: Performance and Efficiency Evaluations*** – Added for administrative guidance.
- ***Chapter 6: E-Manifest System*** – The current “Chapter 4: E-Manifest System” has been renumbered as Chapter 6 with additional changes to Reg. 36.602, 36.605, and Reg. 36.606.
- ***Chapter 7: Tire Generators*** – The current “Chapter 5: Tire Generators” has been renumbered as Chapter 7 with additions to Reg. 36.704(7).
- ***Chapter 8: Rim Removal Fees*** – The current “Chapter 6: Rim Removal Fees” has been renumbered as Chapter 8.
- ***Chapter 9: Commercial Generators and Commercial Generator Fees*** – The current “Chapter 7: Commercial Generators and Commercial Generator Fees” has been renumbered as Chapter 9.
- ***Chapter 10: Persons Who Import Used Tires and Import Fees*** – The current “Chapter 8: Persons Who Import Used Tires and Import Fees” has been renumbered as Chapter 10.
- ***Chapter 11: Disbursements from the Used Tire Recycling Fund*** – The current “Chapter 9: Disbursements from the Used Tire Recycling Fund” has been renumbered as Chapter 11.
- ***New Chapter 12: Beneficial Use*** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- ***New Chapter 13: Waste Tire Sites*** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- ***New Chapter 14: Landfilling of Waste Tires*** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- ***New Chapter 15: Tire Collection Centers*** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- ***New Chapter 16: Tire Processing Facilities*** – Sourced from Regulation No. 14 and revised for compliance with the changes in Act 317 of 2017.
- ***New Chapter 17: Repealer, Severability, and Effective Dates*** – Standard language included in most permanent regulations.