

EXHIBIT D

DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER QUALITY

SUBJECT: Regulation No. 1: Prevention of Pollution by Oil Field Waste

DESCRIPTION: The purposes of the amendments to this regulation are to:

1. Simplify the name of the program to Prevention of Pollution by Oil Field Wastes;
2. Eliminate a duplicative permitting process for disposal wells that are not commercial disposal wells or high volume disposal systems by establishing permit by rule for disposal wells permitted by the Arkansas Oil and Gas Commission (AOGC);
3. Update definitions; and
4. Make minor revisions to include correcting typographical, grammatical errors, and updating formatting to conform with current stylistic guidance throughout the regulation.

PUBLIC COMMENT: A public hearing was held on July 26, 2018. The public comment period expired on August 16, 2018. The Department provided the following summary of the sole public comment received and its response thereto:

Charles Moulton, Administrative Law Judge to the APC&EC

Comment: Recommended the title of Chapter 1 be changed to “General Provisions.”

Response: The Department agrees with the recommended change and has made the change in the revised markup draft.

The proposed effective date is December 31, 2018.

FINANCIAL IMPACT: There is no financial impact on the regulated entities. The entities subject to the proposed amendment operate disposal systems for oil field waste. The proposed amendment will not impose an additional cost on any entity operating a disposal system. Implementation of the amended regulation is estimated to decrease the cost because it eliminates duplicative permitting and most entities will save approximately \$250 per year in permit fees.

The proposed amendment will not impose an additional cost or regulatory burden on ADEQ. The program is supported by permit fees.

EXHIBIT D

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 8-4-217, it is unlawful for any person to cause pollution of any of the waters of this state or to place or cause to be placed any sewage, industrial waste, or other wastes in a location where it is likely to cause pollution of any waters of this state. *See* Ark. Code Ann. § 8-4-217(a)(1)–(2). The Arkansas Department of Environmental Quality (“Department”) is charged with the power and duty to administer and enforce all laws and regulations relating to the pollution of any waters of the state, and the Arkansas Pollution Control and Ecology Commission (“Commission”) is charged with the power and duty to promulgate rules and regulations implementing the substantive statutes charged to the Department for administration. *See* Ark. Code Ann. § 8-4-201(a)(1), (b)(1)(A). *See also* Ark. Code Ann. § 8-4-202(a) (charging the Commission with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Department and the Commission under Title 8, Chapter 4, of the Arkansas Code, concerning the Arkansas Water and Air Pollution Control Act).

**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 Water Quality (OWQ)

DIVISION DIRECTOR Caleb Osborne, Associate Director

CONTACT PERSON Caleb Osborne, Associate Director, Office of Water Quality

ADDRESS 5301 Northshore Drive, North Little Rock, Arkansas

PHONE NO. 501-682-0655 **FAX NO.** 501-682-0880 **EMAIL** osbornec@adeq.state.ar.us

NAME OF PRESENTER AT COMMITTEE MEETING Caleb Osborne

PRESENTER EMAIL osbornec@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, 5th Floor
Little Rock, AR 72201**

- Regulation No. 1: Regulation for the Prevention of
Pollution by Salt Water and Other Oil Field Wastes
Produced by Wells in All Fields or Pools
1. What is the short title of this rule? _____
- Prevention of Pollution by Salt Water and Other Oil
Field Wastes Produced by Wells in All Fields or
Pools
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. _____
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. Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary?

The purposes of the amendments to this regulation are to:

(1) Simplify the name of the program to Prevention of Pollution by Oil Field Wastes;

(2) Eliminate a duplicative permitting process for Disposal Wells that are not Commercial Disposal Wells or High Volume Disposal Systems by establishing permit by rule for Disposal Wells permitted by the Arkansas Oil and Gas Commission (AOGC);

(3) Update definitions; and

(4) Make minor revisions to include correcting typographical, grammatical, errors and updating formatting to conform with current stylistic guidance throughout the regulation.

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

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: July 26, 2018

Time: 2:00 p.m.

Commission Room
ADEQ Headquarters
5301 Northshore Drive

Place: North Little Rock, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

August 16, 2018

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
December 31, 2018 (After legislative review, APC&EC final adoption, and filing with the Secretary of State)
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12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of “agency” under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). However, laws concerning the promulgation of regulations by the APC&EC do require public notice, a copy is attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of “agency” under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). Filing with the Secretary of State does not occur until after legislative review and final APC&EC adoption.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. None anticipated.

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 Water Quality (OWQ)

PERSON COMPLETING THIS STATEMENT Caleb Osborne, Associate Director, OWQ

TELEPHONE (501) 682-0655 **FAX** (501) 682-0880 **EMAIL:** osbornec@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. 1: Regulation for the Prevention of Pollution by Salt Water and Other Oil Field Wastes Produced by Wells in all Fields or Pools

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

Total \$0.00

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

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>
Total	<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	<u>\$ 0.00</u>

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

The entities subject to the proposed amendment to APC&EC Regulation 1 operate disposal systems for oil field waste. The proposed amendment will not impose an additional cost on any entity operating a disposal system. Implementation of the amended regulation is estimated to decrease the cost because it eliminates duplicative permitting and most entities will save approximately \$250 per year in permit fees.

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

The proposed amendment will not impose an additional cost or regulatory burden on ADEQ. The program is supported by permit fees.

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. 1:
REGULATION FOR THE PREVENTION OF POLLUTION BY SALT
WATER AND OTHER OIL FIELD WASTES PRODUCED BY WELLS IN
ALL FIELDS OR POOLS**

Proposed Amendments – Executive Summary

May 10, 2018

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for amendments to Regulation No. 1 (Regulation for the Prevention of Pollution by Salt Water and Other Oil Field Wastes Produced by Wells in All Fields or Pools). The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, establishes the Commission's authority for the rulemaking.

The proposed amendments to the regulation:

- Simplify the name of the program to Prevention of Pollution by Oil Field Wastes;
- Eliminate a duplicative permitting process for Disposal Wells that are not Commercial Disposal Wells or High Volume Disposal Systems by establishing permit by rule for Disposal Wells permitted by the Arkansas Oil and Gas Commission (AOGC);
- Update definitions; and
- Make minor revisions to include correcting typographical, grammatical, errors and updating formatting to conform with current stylistic guidance throughout the regulation.