

March 14, 2018

Kelly Robinson  
Arkansas Department of Environmental Quality  
5301 Northshore Dr  
North Little Rock, AR 72118

Re: Proposed Revisions to  
Arkansas Pollution Control and Ecology Commission  
Regulation 36

Ms. Robinson:

The Arkansas Association of Regional Solid Waste Management Districts appreciates the opportunity to comment on the proposed Revision to Regulation 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.

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.

Following are our specific comments regarding the proposed final version of Regulation 36 currently under consideration by the Commission.

**Comment 1:**

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 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.

**Comment 2:**

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".

**Comment 3:**

Regarding 36.307(A)(13), a requirement has been added for Used Tire Programs (UTP) 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.

**Comment 4:**

Regarding 36.308(A), refer to comment 2. We request removing the dates to allow this section to apply to future revisions and plans that may be submitted.

**Comment 5:**

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 requirement for District Board approval of business plans to 36.404(A).

**Comment 6:**

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.

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.

**Comment 7:**

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.



**Comment 8:**

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 and 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.

**Comment 9:**

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.

**Comment 10:**

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

**Comment 11:**

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. If there are any questions concerning these comments, please feel free to contact us.

Sincerely,

Arkansas Association of Regional Solid Waste Management Districts

  
Wendy Bland

President