Pollution Control and Ecology Commission #014.00-033

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

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CHARLIE DANIELS
SECRETARY OF STATE
STATE OF ARKANSAS
BY

REGULATION NO. 33
MOTOR VEHICLE RACING FACILITY REGULATIONS

Adopted by the PC&E Commission: May 27, 2010

EXHIBIT
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CHAPTER 1: TITLE, INTENT AND PURPOSE

Reg.33.101 Title

The following rules and regulations, adopted by authority of and in accordance with the provisions of A.C.A. Sections 8-1-203, 8-10-303(a)(3)(E), and 8-10-304(b)(6) shall be known as the "Motor Vehicle Racing Facility Regulations," hereinafter referred to as Regulation Number 33.

Reg.33.102 Purpose

The purpose of this regulation is to implement the provisions of A.C.A. Sections 8-10-302, 8-10-303, and 8-10-304.

Reg.33.103 Applicability

This regulation shall apply to all motor vehicle racing facilities constructed on or after January 1, 1995. All permits previously issued to motor vehicle racing facilities shall remain in effect for the full period of time for which they were issued. Subsequent applications for permit renewal shall comply with the requirements of this regulation.

Reg.33.104 Severability

If any provision of this regulation, or the application of such provision to any person or circumstance, is held invalid, the remainder of this regulation, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

CHAPTER 2: DEFINITIONS

All words, terms, and phrases used in this regulation, unless the context otherwise requires, shall have their usual meaning. In addition, for purposes of this regulation, the following definitions apply:

"Annual permit" means the permit issued to a motor vehicle racing facility on an annual basis after the issuance of the initial permit.

"Automobiles or trucks modified for racing" means any vehicle designed to be operated with at least four wheels in contact with the ground and a gross dry weight, excluding the driver, of more than one thousand (1,000) pounds which is used in competitive racing or public racing demonstrations at a motor vehicle racing facility in Arkansas.

"Begin construction" means the initiation of physical on-site construction activities on a motor vehicle racing facility which are of a permanent nature.

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Competitive racing of automobiles or trucks that are modified for racing" means any event in which it is possible to compare the performance of the participants, even if such comparison is not actually done; or any event designed as an exhibition of driving skill.

"Constructed" means the completion of physical on-site activities so that a motor vehicle racing facility is capable of hosting competitive racing events.

"Department" means the Arkansas Department of Environmental Quality, or its successor. When reference is made in this regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

"Designed and used for competitive racing" means any motor vehicle racing facility capable of hosting competitive racing.

"Initial annual permit" means the first permit issued to a motor vehicle racing facility.

"Material change" or "Materially different" means the addition of a new racing venue or other substantial and significant modification to the way the facility is operated.

"Motor vehicle racing facility" means any outdoor facility used for competitive racing by automobiles or trucks that are modified for racing.

CHAPTER 3: PERMIT REQUIREMENTS

Reg.33.301 Initial Annual Permit Pre-Application Requirements

(A) The party seeking the motor vehicle racing facility initial annual permit must obtain consent and signatures on a petition that approves the construction of the motor vehicle racing facility. At least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters who own property or live within three (3) miles of the outside boundary of the proposed motor vehicle racing facility must consent and sign the petition. For proposed facilities located within three (3) miles of more than one county, at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed motor vehicle racing facility in each county must consent and sign the petition. The petitions shall include:

(1) A written description of the proposed motor vehicle racing facility including:

(a) The motor vehicle racing facility address or legal description of the property;

(b) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;

(c) The maximum projected noise level of the racing vehicles;

(d) A description of the kinds of races and the types of buildings, stands, or other physical plant proposed for the motor vehicle racing facility; and

(e) Estimates of traffic counts and numbers of spectators.

(2) The registered voter's or consenting property owner's name and signature;

(3) The registered voter's or consenting property owner's residence address or the legal description of the property located within the three (3) mile area; and

(4) The date of the registered voter's or consenting property owner's signature. Signatures become invalid sixty (60) days after signing.

(B) The party seeking the motor vehicle racing facility permit shall file the petition.

(1) For proposed facilities located within the boundaries of any city or town, the party shall file the petition with the city clerk.

(2) For proposed facilities located wholly or partially outside the boundaries of any city or town, the party shall file the petition with the county clerk.

(3) For proposed facilities located within three (3) miles of more than one county, the party shall file the petition with the county clerk for each county.

(C) The city or county clerk, as the case may be, shall verify the petition pursuant to A.C.A. Section 7-9-109.

(1) The clerk shall determine the sufficiency of the signatures and certify the sufficiency or insufficiency of the signatures in writing to the Department.

(2) The clerk's decision is not subject to review by the Department or the Commission.

(3) The city or county clerk's certification shall be valid for a period of eighteen (18) months from the date of issuance.

(D) Reg.33.301(A) – (C) do not apply to any motor vehicle racing facilities located in a county having a population between eighty thousand (80,000) and ninety thousand (90,000) according to the 1990 Federal Decennial Census and that are:

(1) South of a navigable waterway that traverses the state; or

(2) More than two (2) miles from an interstate highway, public or private school, or church facility in place at the time of the original permit application.

(E) No motor vehicle racing facility shall be permitted or constructed within one (1) mile of the boundary of another county if the proposed motor vehicle racing facility will be located in a county having a population between eighty thousand (80,000) and ninety thousand (90,000) according to the 1990 Federal Decennial Census and that are:

(1) South of a navigable waterway that traverses the state; or

(2) More than two (2) miles from an interstate highway, public or private school, or church facility in place at the time of the original permit application.

Reg.33.302 Initial Annual Permit Application Requirements

(A) All motor vehicle racing facilities constructed after January 1, 1995, shall obtain a permit in accordance with this regulation.

(B) Except as provided in Reg.33.301(D), all initial annual permit applications for a motor vehicle racing facility shall meet the requirements of Reg.33.301(A) – (C). The party must provide the clerk's certification of the signatures on the petition with the motor vehicle racing facility permit application.

(C) Applications shall include a written proposal for the motor vehicle racing facility containing the substance of the proposed motor vehicle racing facility, including:

(1) A description of the types of motor vehicles proposed for racing at the motor vehicle racing facility;

(2) The maximum projected noise level of the racing vehicles;

(3) A description of the kinds of races and the types of buildings, stands, parking areas, or other physical plant proposed for the motor vehicle racing facility;

(4) Estimates of traffic counts and numbers of spectators;

(5) A traffic control plan;

(6) A copy of the city or county clerk's certification of the signatures on the petition as required by Reg.33.301(C);

(7) A sample copy of the petition;

(8) A disclosure statement in accordance with Regulation Number 8; and

(9) Any other relevant permit information as may be determined necessary for the permit application by the Department.

(D) All permit applications for a motor vehicle racing facility shall be on such forms and contain such information as the Department may reasonably require.

(E) If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a reasonable deadline for a response.

(F) Any applicant who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable before final action is taken on its application.

Reg.33.303 Public Participation

(A) For the initial annual permit application, the Department shall conduct a public hearing on the proposed motor vehicle racing facility. The Department shall set a date for the public hearing to be held on the proposed motor vehicle racing facility annual initial permit decision which shall not be less than thirty (30) days after the filing of the initial annual permit application. The hearing may be adjourned and continued if necessary. Any interested persons may appear and contest the granting of the approval or renewal of the motor vehicle racing facility permit. Affidavits in support of or against the proposed motor vehicle racing facility or a permit renewal, which may be prepared and submitted, shall be examined by the Department.

(B) Public notice of an initial permit application and notice of public hearing shall be published in a newspaper of general circulation in the county in which the motor vehicle racing facility is proposed to be located. The Department shall provide or approve the format of the notice. The notice shall include:

(1) The motor vehicle racing facility name and business address or legal description of the property;

(2) The type of permit for which the application has been made;

(3) The date the application was deemed administratively complete;

(4) Notice of the Department's proposed decision;

(5) The date, time and place of the public hearing; and

(6) A statement that oral public comments will be accepted at the public hearing. To ensure comments are accurately recorded, the Department prefers written comments. The period for written public comments shall extend from the date of the public notice to the date of the public hearing. Comments must be received by the close of the public hearing.

(C) Those sections of Regulation Number 8 dealing with Public Notice of Permit Application (Reg.8.205), Request for Public Hearing on Application for Permit (Reg.8.206), Public Notice of Draft Permitting Decision (Reg.8.207), Public Comment on Draft Permitting Decision (Reg.8.208), Public Hearings (Reg.8.209), Public Meetings (Reg.8.210), and the second paragraph under "Director's Decision," Final Permitting Decision (Reg.8.211(A)(2)) do not apply to initial annual permits issued under this section.

Reg.33.304 Final Action on Permit

(A) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the Department shall be satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the Department shall grant the initial permit approving the proposed motor vehicle racing facility or shall renew approval to the permitted or existing motor vehicle racing facility.

(B) The Department may impose special conditions upon the issuance of the permit.

(C) The Department shall notify in writing the owner/operator and any person that submitted public comments on the record of its final permitting decision.

(D) The Department's final decision shall include a response to each issue raised, if any, during the public comment period.

(E) No permit shall be issued unless the applicant has paid all fees assessed.

(F) The Director's final permit decision is subject to review pursuant to Regulation Number 8.

Reg.33.305 Transfer of Permits

(A) Permits issued under this regulation shall remain freely transferable provided:

(1) The applicant for the transfer notifies the Director at least thirty (30) days in advance of the proposed transfer date on such forms as the Director may reasonably require, and

(2) Submits a disclosure statement or other such documents as required.

(B) The Director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(1) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;

(2) An applicant which owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or

(3) A person with a history of noncompliance with environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant which could have an impact upon the environment.

(C) Public notice requirements shall not apply to changes in ownership.

Reg.33.306 Permit Renewals

(A) Applications for an annual permit shall contain a description of any changes to the motor vehicle racing facility since the last permit issuance or a statement that no changes have occurred.

(1) In the event there have been no changes to the motor vehicle racing facility the Department may issue the annual permit without notice to the public.

(2) If any material changes are made to the motor vehicle racing facility:

(a) The permit shall be amended accordingly;

(b) The Department shall provide notice to the public in accordance with the procedures contained in Regulation Number 8; "Public Notice of Draft Permitting Decision (Reg.8.207);" and

(c) The Department may reconsider the approval of the permit.

(3) Renewal of an annual permit may also be denied if:

(a) The racing facility is determined to be in violation of any standards under which the permit was issued;

(b) The racing facility is constructed or is being operated in a manner that is materially different than was represented during the petition process; or

(c) Fraud, misrepresentation, or false statement of facts was used to obtain signatures for the petition process.

(B) The requirements of Reg. 33.302(C)(8)&(9), (D), (E), and (F) shall apply to permit renewals.

(C) In its discretion, the Department may hold public hearings for the renewal of any permits as is necessary.

Reg.33.307 Permit Fees

(A) Each initial annual permit shall be subject to a fee of five hundred dollars ($500).

(B) Each annual permit shall be subject to a fee of two hundred dollars ($200).

(C) The requirements of Chapter 3 of Regulation Number 9 shall apply to fees collected under this regulation.

CHAPTER 4: EFFECTIVE DATE

Reg.33.401 Effective Date

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