

MINUTE ORDER NO. 85-34

Chemical Corporation - Order  
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The Commission hereby authorizes the Chairman to sign and issue Order, LIS 85-043, based upon the evidence presented at the hearing held in the matter raised upon the petition filed by Rachel McKinney for Commission review of the Director's decision to grant permit numbers 2-U and 3-U to Great Lakes Chemical Corporation pursuant to its application therefor and applicable law.

COMMISSIONERS

D.B.

[Signature]

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[Signature]

[Signature]

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CHAIRMAN

SUBMITTED BY: James M. McHaney DATE PASSED: 11-22-85

ARKANSAS POLLUTION CONTROL COMMISSION  
8001 NATIONAL DRIVE  
LITTLE ROCK, ARKANSAS 72209

IN THE MATTER OF )  
GREAT LAKES CHEMICAL CORPORATION ) LIS 85-043  
U.I.C. PERMIT NO'S 2-U and 3-U )

ORDER

ON the 22nd day of November, 1985, the Request for Review of the decision of the Director of the Arkansas Department of Pollution Control and Ecology granting Underground Injection Well Permit No's 2-U and 3-U to Great Lakes Chemical Corporation, as Permittee, comes on to be heard based upon the record in this proceeding and upon testimony ore tenus of witnesses called to testify on behalf of the respective parties, during the course of the Adjudicatory Hearing held on October 17-18, 1985 before James M. McHaney, Esquire, the duly designated Hearing Officer and the findings as made by him and upon Briefs as filed on behalf of said parties and arguments of their respective counsel.

STATEMENT OF THE CASE

This matter is before the Commission pursuant to a written Request for Review and Adjudicatory Hearing which was filed timely on behalf of Mrs. Rachel McKinney (the "Applicant") of the decision of the Director of the Arkansas Department of Pollution Control and Ecology (the "Department") which challenged the action of the Director in the issuance of Well Permit

No's 2-U and 3-U on April 3, 1985, to Great Lakes Chemical Corporation (the "Permittee"). The proceeding is therefore before the Commission pursuant to Section 4 of Part III of Regulation No. 8. Upon the filing of such Request, James M. McHaney, Esquire, was designated as Hearing Officer and a public hearing was thereafter scheduled and held on October 17-18, 1985, pursuant to a Notice of Hearing served upon all parties to the proceeding as required by law and the rules of the Commission. At the commencement thereof, counsel for the respective parties consistent with a stipulation by and between them offered joint exhibits consisting of the entire file of the Department comprising six (6) volumes and constituting the permit applications, appeal file and copy of the minutes of the Commission meeting held on May 24, 1985, at which time the request of the Applicant for the stay of said permits was denied. Each party at the Adjudicatory Hearing was represented by counsel and otherwise appeared by and through witnesses who testified for and on their behalf together with documentary evidence which was then introduced and made a part of the record. It is that record and the findings of the Hearing Examiner which is now before the Commission for review.

Applicant, in her Request for Review, alleged that:

- (a) The granting of the permits by the Director contravenes the proper discharge of the statutory duties imposed upon the Director and the Commission, and in particular those duties set

forth in Ark. Stat. §82-1901, et seq, and Sub-divisions 3, 7 and 8 of Ark. Stat. §82-1904, as amended;

- (b) To the extent that Federal requirements are delegated to a State agency for administration, the Applicant objects on the further ground that the Arkansas Pollution Control Commission, by and through the decision of its Director, has failed to assure compliance with the Federal statutory and regulatory requirements, as set forth in 33 U.S.C. §1342(b), as amended, 33 U.S.C. §1314(h)(2), and 33 U.S.C. §1313, all as amended, and as a part and as expressions of Federal policy with regard to the preservation and promotion of clean water, for drinking and other purposes, and the elimination of pollution therefrom; and
- (c) The Director failed to comply with the requirements of the statutory and regulatory schemes as promulgated in 42 U.S.C. §300(h)(3) concerning the operation of new underground injection wells, and considerations of underground aquifers.

Factual objections were likewise incorporated within the initial Request for Review for the purpose apparently of supporting the legal objections set forth above. These were set

forth with greater particularity within the Pre-Trial Disclosure Statement filed on behalf of Applicant herein in which the issues were more fully defined.

FINDINGS OF FACT

1. That due notice has been given as required by law and the rules of the Commission and the Commission has jurisdiction of the parties hereto and of the subject matter hereof.
2. On June 19, 1984, the Department announced the draft underground injection control (UIC) permit for the four (4) existing Class I waste disposal wells at the El Dorado and South Plants of Permittee in Union County, Arkansas.
3. On December 2, 1984, the Department announced the draft UIC permit for two (2) proposed Class I waste disposal wells at the El Dorado Plant of Permittee.
4. The draft permits as referred to in Findings 2 and 3 above, were announced by:
  - a. Publishing legal notices as required by law and the rules of the Commission;
  - b. Issuing news releases to the news media; and
  - c. Mailing copies of the public notices to interested persons.
5. Written comments were submitted and oral comments received at a public hearing held by the Department on January 17, 1985, at which all of the factual objections urged by Applicant in her Petition for Review [as otherwise set forth with greater particularity within the Pre-Trial

Disclosure Statement filed on her behalf herein] were addressed by persons who appeared and testified at such public hearing and such comments were fully considered by the Director within the record of the Department before her at the time the decision was made to issue the permits now under review;

6. That no new matters not otherwise presented during the public comment period have been offered by Applicant or by witnesses called to testify for and on her behalf during the Adjudicatory Hearing as held herein and the testimony and evidence as offered related to comments as previously made at the public hearing held on January 7, 1985, which were otherwise considered by the staff of the Department and the Director in the granting of the permits the subject of review;
7. That the Commission has assumed primacy under the Underground Injection Control Program as approved on behalf of the Administrator of the Environmental Protection Agency and pursuant thereto has promulgated implementing rules and regulations and published criteria and standards relating to plans and specifications for disposal systems and the underground injection of waste effluents;
8. That based upon the record in this proceeding it is established that the Permittee fully complied with all conditions and requirements for the issuance of said permits and that such permits were issued as required by law based

upon the favorable recommendation of the staff of the Department and the finding by the Director that the permit applications conformed with all applicable published criteria.

#### CONCLUSIONS OF LAW

1. That all procedural requirements have been met and that proper notice has been given as required by law and the rules and regulations of the Commission.
2. That the Commission has jurisdiction over the parties hereto and of the subject matter hereof.
3. That based upon the record in this proceeding the applications as filed complied fully with all conditions and requirements for the issuance thereof and with the published criteria therefor.
4. That the acts of the Director in issuing such permits under review was procedurally and legally proper and fully supported by the record in this proceeding and in conformity with the recommendations of the staff of the Department and findings as made by the Director based thereon.
5. That the acts of the Director in issuing said permits should be approved and the validity of said permits subject to review should therefore now be ratified and confirmed.

ORDER

Now, therefore, it is by the Commission ordered that the acts of the Director in the issuance of UIC Permit No's 2-U and 3-U to Great Lakes Chemical Corporation, Permittee, be and the same are hereby approved based upon the record in this proceeding and the validity of said permits are hereby ratified and confirmed.

ARKANSAS POLLUTION CONTROL COMMISSION

By: 

It is so ordered by the Commission:

Jerry Hill, Chairman  
Bryce Mobley, Vice Chairman  
Joseph A. Pascale  
Jim G. Brooks  
James T. Jordan  
Randy Young  
Edwin E. Waddell  
Norman F. Williams  
Steve Wilson  
William E. Wright  
Virginia Allured

ATTEST:

  
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DIRECTOR