
On July 1, 1991, Fred Hale applied for a permit to construct and operate a liquid animal waste disposal facility in conjunction with a 4,200 head swine finishing operation near Russellville, Arkansas. A permit was issued on September 18, 1991, which became effective on October 18, 1991. Petitioners, who are local residents, filed this timely appeal raising several issues. A hearing was held in which the Administrative Law Judge heard two days of testimony and received evidence from the petitioners, Fred Hale and from the Department.

In his opinion, dated June 8, 1992, Judge Gibson reached his decision based on two issues, namely whether the operation of the facility will cause pollution contrary to the Water Pollution Act and was the action of the Department in issuing the permit arbitrary and an abuse of discretion.


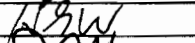
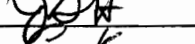
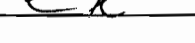

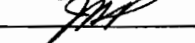
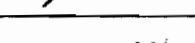

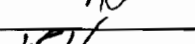
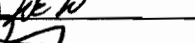



Judge Gibson found that the inspection, plans and tests for the site did not meet the guidelines and criteria of the Department nor meet the standards set out by the Water Pollution Control Act. The result was a permit decision by the Department that was arbitrary and an abuse of discretion as there was the likelihood of pollution as defined by A.C.A. 8-4-102. Judge Gibson ordered the permit withdrawn and canceled.


The Commission reviewed the Findings of Fact and Conclusions of Law, the transcript and the record and, after hearing the arguments of the petitioners, the Department and Fred Hale, remanded the matter to the judge for a more specific and detailed Findings of Fact and Recommendation.

Judge Gibson reviewed the transcript and exhibits and issued a new Findings of Fact, Conclusions of Law, and Recommendation dated March 12, 1993. In the new recommendation, Judge Gibson ruled that the Petitioners have sustained their burden of proof by establishing that the permit did not meet the required criteria of buffer zones, acreage, nitrogen uptake capacity, and suitability of topography. Further, it was found that there would likely be pollution to the waters of the state and that there is a likelihood of a nuisance occurring from animal waste run-off. Judge Gibson recommended that the permit be canceled and vacated.

After reviewing the new recommendation, the Commission accepts the judge's recommendation and reverses the Director's decision.

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