

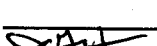



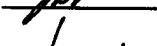

West Memphis Wastewater Treatment Facility (WMWW) submitted a proposal to the Department to construct an addition to its permitted POTW facility in order to correct a dangerous overflow and bypassing problem at the facility during times of heavy flows and rains. The addition would be used only at those times. The Department denied the proposal as it was determined to be a "bypass" as defined by 40 CFR 122 (C)(m)(1)(i) and by the permit language at Part IV, §A (5).



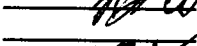

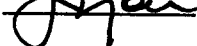

Judge Cloninger rendered a Recommendation of the Hearing Officer affirming the action of the Department in denying the proposal. This Commission heard arguments and affirmed the Recommendation dated, January 9, 1992. Subsequently, WMWW submitted an application for a permit modification. The Department, in a Motion to Dismiss, argued that the request for permit modification was the previously denied request for a construction permit. Further, the physical construction involved was not allowed by federal statutes. WMWW argued that the new submittal had not been previously decided as it was a procedurally different request. It further argued that the law allowed the physical construction through exemptions to the statutes.

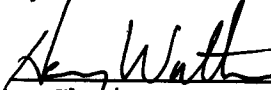
The Hearing Officer found that the matter was the same as had been previously decided and all matters should have been raised in the first appeal.

After a review of the administrative record, and upon hearing arguments of the Department and West Memphis, the Commission affirms the Recommendation of the Hearing Officer.

COMMISSIONERS

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Chairman

SUBMITTED BY: M. Eisele DATE PASSED: June 4, 1993