

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION - SUBJECT Briar Gypsum  
Request for Third Party Rulemaking  
on Reg. No. 2 Docket No. 94-060

MINUTE ORDER NO. 94-56

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On June 1, 1994, Briar Gypsum, Inc. ("Briar") filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2 ("Petition"). The Petition has been designated as Docket No. 94-060. Pursuant to A.C.A. §8-4-202 (c) (Repl. 1993), the Arkansas Pollution Control and Ecology Commission ("Commission") has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking.

The Commission's Regulations Committee met on June 23, 1994, to review Briar's petition. Having considered the petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revisions to Regulation No. 2.

The Regulations Committee also proposes adoption of the following procedural schedule so consideration of this matter may proceed in an efficient and orderly manner.

1. Briar, and the Arkansas Department of Pollution Control and Ecology ("Department"), shall file an original and five (5) copies of all comments, briefs, or other materials required under this Minute Order. Each party shall serve the other with the materials filed. This requirement does not apply to transcripts.

2. Persons other than Briar or the Department submitting written public comments shall submit their written comments to the Department. With ten (10) business days following the period for filing written comments, the Department shall deliver the originals of all comments received by the Department to the Commission Secretary.

3. Briar shall file, no later than July 8, 1994, a black-lined version of each section of Regulation No. 2 which will be amended by the proposed rule.

4. To assist the Department, Briar shall submit, no later than July 8, 1994, a proposed public notice to the Department to be used in mailing notice to interested persons, for publishing in newspapers, and for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, in the Department's discretion, be

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approved for use or the Department may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8, Part 3, Section 3.1.3 as adopted by the Commission on May 23, 1994. A decision on the form of the public notice to be used shall be made by the Department not later than July 15, 1994. By agreement, Briar shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade, or professional publications chosen by the Commission. Briar shall file only the original proof of publication for each publication with the Commission.

The Department shall be responsible for mailing the public notice to all persons who have requested advance notice of rulemaking proceedings and the cost of the mailing.

5. Briar shall file not later than July 26, 1994, written comments, which at a minimum address the following matters:

- a. An explanation of the necessity for the proposed rule, and all reasons on which the proponent of the rule relies in support of the rule's adoption.
- b. An explanation which shows that any technical regulation or standard which is changed by the proposed rule is based on generally accepted scientific knowledge or engineering practices and any evidence in support thereof.
- c. An explanation showing that the proposed revisions will not harm the environment, or if the environment will be harmed, the reasons which justify such action.
- d. Any other information which may assist the Commission in making a decision on the proposed revisions.

The comments shall state the name of the person who will sponsor

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the comments and answer questions about the comments. Briar may file as many comments as it believes necessary as long as each set of comments is sponsored by a specific person.

6. The Department shall not later than August 12, 1994, file with the Secretary written comments supporting, opposing or seeking modification of the proposed rule and all reasons on which it relies for its position. The Department shall also state the name of the person sponsoring, each set of written comments filed.

7. A public hearing shall be conducted at 2:00 p.m. on August 24, 1994, located at the Department.

8. The period for receiving all written comments by the public, Briar and the Department shall conclude on September 8, 1994. On or before this date, Briar and the Department shall file final written comments which at a minimum shall:

- a. state their respective positions regarding each legal and factual issue raised, and
- b. state any other information which may assist the Commission in making its decision.

9. Briar and the Department shall each file, not later than September 30, 1994, a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2 (1), (2) and (3).

10. Briar and the Department shall each file not later than September 30, 1994, a proposed Minute Order describing this matter.

11. The Regulations Committee shall meet at 2:00 p.m. on October 27, 1994, at the Department to consider the record in this matter; ask questions of the sponsors of any written or oral comments or of legal counsel for Briar and the Department; and to make a recommendation to the Commission.

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12. The Commission will consider this matter at its regularly scheduled meeting on October 28, 1994.

a. The Chairman shall permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The public comment period will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chairman in his discretion, may extend the one (1) hour public comment period.

b. At the discretion of the Chairman, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Legal counsel representing Briar and legal counsel representing the Department shall be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all comments, the Chairman will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring comments who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

e. After each Commissioner has had an opportunity to ask questions, the Chairman will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

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13. Briar has agreed to pay all costs for the preparation of a transcript of the public hearing, Regulation Committee meetings, regarding this docket which takes place after the adoption of this Minute Order, and those parts of Commission meetings concerning this docket. The Department's court reporter shall be employed. The court reporter shall deliver the original transcript to the Commission and a copy to Briar. The Department may borrow the Commission's transcript for purposes of preparing its final comments and Statement of Basis and Purpose.

14. The Commission authorizes the Regulations Committee, in consultation with the Chairman, to revise the procedures and schedules set out above.

The Commission accepts the recommendations of the Regulations Committee and institutes a rulemaking proceeding in Docket No. 94-060. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS

AC  
MS  
BTH  
DH  
JH  
JM  
JW  
A. Carter  
M. Cooper  
B. Davis  
D. Hanby  
J. Hill  
J. Mobley  
J. Pascale

J Shannon  
ABW  
AWB  
AWB  
AWB  
J. Shannon  
H. Watkins  
R. Wilbourn  
N. Williams  
W. Wright  
R. Young

JW  
Chairman

SUBMITTED BY: YOUNG

PASSED: JUNE 24, 1994