

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077

MINUTE ORDER NO. 94-72

PAGE 1 OF 6

On June 23, 1994, Tyson Foods and Howard County Water Facilities, Inc. ("Tyson") filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2 ("Petition"). The Petition has been designated as Docket No. 94-077. 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 and July 22, 1994, to review Tyson's petition. The Regulation's Committee recommended the Commission institute a rulemaking proceeding to consider adopting the proposed revisions to Regulation No. 2. The Regulations Committee also proposed adoption of a procedural schedule which provides for one public hearing at the Department so consideration of this matter could proceed in an efficient and orderly manner.

At the Commissioner's regularly scheduled meeting on July 22, 1994, the Commissioner's discussed conducting a public hearing in the area where the Tyson facility was located. Commissioner Young made a motion which was seconded by Commissioner Carter to conduct two public hearings, one in Little Rock, and one in the Millwood Lake area near the Tyson facility. The Commission unanimously adopted the motion.

At the Regulations Committee meeting held on August 25, 1994, the Committee voted to recommend that only one public hearing be conducted at or near Nashville, Arkansas, the site of the Tyson facility.

This Minute Order reflects the Commission's decision made on July 22, 1994, to initiate the rulemaking proceeding and proposes the following procedural schedule:

1. Tyson 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.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077**

MINUTE ORDER NO. 94-72

PAGE 2 OF 6

2. Persons other than Tyson or the Department submitting written public comments shall submit their written comments to the Department. Within 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. Tyson shall file, no later than September 2, 1994, a black-lined version of each section of Regulation No. 2 which will be amended by the proposed rule.

4. Tyson shall submit to the Department's public affairs office, no later than September 2, 1994, a proposed public notice for use 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 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. The public notice shall be published not later than September 13, 1994. By agreement, Tyson shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade, or professional publications chosen by the Commission. Tyson 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. Tyson shall file not later than September 2, 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.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077

MINUTE ORDER NO. 94-72

PAGE 3 OF 6

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 the comments and answer questions about the comments. Tyson 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 Friday, September 30, 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 7:00 PM on November 1, 1994, at or near Nashville, Arkansas. The public hearing will be held at a location to be determined by the Department's public affairs office.

8. The period for receiving all written comments by the public, Tyson and the Department shall conclude on November 15, 1994. On or before this date, Tyson and the Department shall file final written comments which at a minimum:

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077

MINUTE ORDER NO. 94-72

PAGE 4 OF 6

- 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. Tyson and the Department shall each file, not later than December 16, 1994, a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2 (1), (2) and (3).

10. Tyson and the Department shall each file not later than December 16, 1994, a proposed Minute Order deciding this matter.

11. The Regulations Committee shall meet at 2:00 PM, on January 26, 1995, 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 Tyson and the Department; and to make a recommendation to the Commission.

12. The Commission will consider this matter at its regularly scheduled meeting on Friday, January 27, 1995.

- 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.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077

MINUTE ORDER NO. 94-72

PAGE 5 OF 6

c. Legal counsel representing Tyson 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.

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.

13. Tyson has agreed to pay all costs for the preparation of a transcript of the public hearing, Regulation Committee meetings and Commission meetings which concern this docket and occur after the adoption of this Minute Order. The Department's court reporter shall be employed. The court reporter shall deliver the original transcript to the Commission and a copy to Tyson. 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.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT TYSON FOODS AND
HOWARD COUNTY WATER FACILITIES, INC.
THIRD-PARTY RULEMAKING;
DOCKET NO. 94-077

MINUTE ORDER NO. 94-72

PAGE 6 OF 6

The Commission accepts the recommendations of the Regulations Committee and institutes a rulemaking proceeding in Docket No. 94-077 effective July 22, 1994. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS

[Signature] A. Carter
[Signature] M. Cooper
[Signature] B. Davis
[Signature] D. Hanby
[Signature] J. Hill
[Signature] J. Mobley
[Signature] J. Pascale

JTS
HGW
[Signature] J. Shannon
[Signature] H. Watkins
[Signature] R. Wilbourn
[Signature] N. Williams
[Signature] W. Wright
[Signature] R. Young

[Signature]
Chairman

SUBMITTED BY: R. Young PASSED: 08-26-94