

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - Acme
Brick, Inc.
Malvern, Arkansas
Docket No. 95-002-R

MINUTE ORDER NO. 95 - 006

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On January 11, 1995, Acme Brick, Inc. ("Acme") filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2 ("Petition") on behalf of its Hot Springs County, Arkansas, facility. The Petition has been designated as Docket No. 95-002-R. 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 January 26, 1995, to review Acme's Petition. Having considered the Petition, the Regulation's 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. Acme and the Arkansas Department of Pollution Control and Ecology ("Department") shall file an original and seven (7) 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 Acme 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. Acme shall file, no later than Friday, February 17, 1995, a black-lined version of each section of Regulation No. 2 which will be amended by the proposed rule.

4. Acme shall submit the following to the Department's public affairs office, no later than Friday, March 3, 1995:

- a. 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

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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 March 10, 1995. By agreement, Acme shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade, or professional publications chosen by the Commission. Acme 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.

- b. Sixty-five (65) copies of an executive summary of the proposed rulemaking.
- c. Eight bound copies of the Petition and all supporting documentation.

5. Acme shall file not later than Friday, March 3, 1995, 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.

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The comments shall state the name of the person who will sponsor the comments and answer questions about the comments. Acme 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, April 7, 1995, 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 on either Monday, Tuesday or Thursday of the week of May 1-5, 1995, at or near Hot Springs County, Arkansas. The exact date, time and location of the public hearing will be determined by the Department's Public Affairs Office.

8. The period for receiving all written comments by the public, Acme, and the Department shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 3.2.3. On or before this date, Acme and the Department shall file final written comments which at a minimum:

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

9. Acme and the Department shall each file, not later than Wednesday, June 7, 1995, a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3).

10. Acme and the Department shall each file, not later than Wednesday, June 7, 1995, a proposed Minute Order deciding this matter.

11. The Regulations Committee shall during its regularly scheduled June meeting, consider the record in this matter; ask questions of the sponsors of any written or oral comments or of legal counsel for Acme 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 June meeting.

- 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 Acme 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. If Acme desires a transcript of the public hearing, Regulation Committee meetings, and Commission meetings, or if required by the Commission, Acme agrees 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 for public hearings or meetings held in Pulaski County, Arkansas, unless the Department's court reporter is unavailable. For public hearings or meetings located outside Pulaski County, Arkansas, any court reporter may be employed. The court reporter shall deliver the

