

On March 12, 1996, Arkansas Environmental Federation ("AEF"), filed a **Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2 ("Petition")**. The Petition has been designated as Docket No. 96-005-R. Pursuant to Ark. Code Ann. § 8-4-202 (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 Friday, March 22, 1996 to review AEF'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. AEF, and the Arkansas Department of Pollution Control and Ecology ("Department"), shall file an original and fifteen (15) copies of all comments 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 AEF or the Department submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. Unless filed with the Petition, AEF shall file, no later than Friday, April 5, 1996, a red-lined version of each section of Regulation No. 2 which will be amended by the proposed rule.

4. AEF shall submit the following to the Department's public affairs office, no later than Friday, April 12, 1996:

- a. A proposed public notice 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 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 April 19, 1996. By agreement, AEF shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade, or professional publications chosen by the Commission. AEF 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 the executive summary of the proposed rulemaking.
 - c. Eight bound copies of the Petition and all supporting documentation.
5. A public hearing or hearings shall be conducted on June 4 or 5, 1996, located in Little Rock, Arkansas.
6. The period for receiving all written comments by the public, AEF and the Department shall conclude ten (10) business days after the date of the public hearing pursuant to regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted.
7. AEF and the Department shall each file, not later than June 30, 1996, a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2 (1), (2) and (3).
8. AEF and the Department shall each file not later than June 30, 1996 a proposed Minute Order describing this matter.
9. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.
10. The Regulations Committee will consider this matter at its July, 1996 meeting. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

11. At the Commission's regularly scheduled July, 1996 meeting, the presentation of oral statements and legal arguments will be regulated as follows:

- a. The Chair of the Commission will 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 period of statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.
- b. At the discretion of the Chair, 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 AEF and legal counsel representing the Department shall be permitted ten (10) minutes in which to address the Commission.
- d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of person questioned by a Commissioner.

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

12. AEF will prepare all necessary forms for submission of the adopted regulation to the Arkansas Code Revision Commission. The forms will be provided to the Commission Secretary within thirty (30) days of the date on which the Commission adopts the regulation.

13. If AEF desires a transcript of the public hearing, Regulation Committee meetings, and Commission meetings, or if required by the Commission, AEF 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. A court

ARKANSAS POLLUTION CONTROL
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ENVIRONMENTAL FEDERATION - REGULATION
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reporter will be employed by AEF. The court reporter shall deliver the original transcript to the Commission Secretary.

14. The Commission authorizes the Regulations Committee, in consultation with the Chair of the Commission, 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. 96-005-R effective Date of Commission Hearing. The Commission adopts, without modification, the procedural schedule set forth above.

MB
AC
MFC
ASA
SH
SM

B. Bush
A. Carter
M. Cooper
B. Davis
D. Hanby
J. Hill
J. Mobley

JAN
JTS
HW
EW
KEW

J. Pascale
J. Shannon
H. Watkins
R. Wilbourn
W. Wright
R. Young

P. Wilbourn
CHAIR

SUBMITTED BY: C. Nestrud PASSED: March 22, 1996

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