

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**LOCATION -- SUBJECT L&L Oil
Company, Inc., Mountain Home, AR
Docket No. 97-004-MISC
Petroleum Storage Tank Trust Fund**

Minute Order No. 98-⁰⁶06

Page 1 of 2

On March 11, 1996, the Arkansas Department of Pollution Control & Ecology ("Department") determined that corrective action activities undertaken by L&L Oil Company, Inc. ("L&L") were ineligible for reimbursement under the Petroleum Storage Tank Trust Fund ("Fund").

L&L appealed this determination to the Arkansas Petroleum Storage Tank Trust Fund Advisory Committee ("Committee") pursuant to Regulation No. 12. The Committee determined that the L&L corrective action activities were eligible for reimbursement from the Fund. This decision was documented in a letter from the Director, Randall Mathis, to L&L dated October 22, 1997, which is attached as Exhibit "A."

The Director, Randall Mathis, informed L&L in the October 22, 1997 letter that he disagreed with the Committee's determination and was denying L&L's request for reimbursement.

On November 21, 1997, L&L filed a Request for Commission Review and Adjudicatory Hearing before the Arkansas Pollution Control & Ecology Commission appealing the Director's decision.

On November 24, 1997, L&L also appealed the Director's decision to the Circuit Court of Baxter County, Arkansas stating in the Notice of Appeal that "the statutes establishing the Fund did not provide the procedures for review of a decision regarding the Fund by the Arkansas Department of Pollution Control & Ecology ("Department"); therefore L&L files this Notice of Appeal while simultaneously submitting a Request for Review by the Arkansas Pollution Control & Ecology Commission ("Commission") to perfect its appeal in the event it is determined that an appeal to the Commission is inappropriate."

The Department agrees with L&L that an appeal from the Director's decision concerning eligibility for reimbursement from the Fund is a decision which is appealable to the Commission pursuant to Ark. Code Ann. § 8-1-203(b)(8). L&L and the Department agree that the authority of the Commission to review the Director's decision is based upon Ark. Code Ann. § 8-1-203(b)(8) which states as follows:

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION -- SUBJECT L&L Oil
Company, Inc., Mountain Home, AR
Docket No. 97-004-MISC
Petroleum Storage Tank Trust Fund

Minute Order No. 98- ⁰⁶ 06

Page 2 of 2

(a) The Commission's powers and duties shall be as follows:

* * *

(8) Upon majority vote, initiate review of any director's decision.

Both the Department and L&L acknowledge that the statutes establishing the Fund do not provide procedures for review of a decision by the Director regarding a party's eligibility under the Fund. Both parties believe that Ark. Code Ann. § 8-1-203(b)(8) is the only authority upon which to base the Commission's jurisdiction of the Director's decision and that there is no other statutory or regulatory authority providing to the contrary. Meanwhile, the second L&L appeal is pending in the state court in the Circuit Court of Baxter County in the event the Commission declines jurisdiction.

In light of these circumstances, both L&L and the Department requested at the Commission meeting of January 23, 1998 a determination by the Commission only on the issue of jurisdiction.

Based upon Ark. Code Ann. § 8-1-203(b)(8) the Commission determines that, upon majority vote of the Commissioners, the Commission has the proper jurisdiction over an appeal from the Director's decision regarding the Arkansas Petroleum Storage Tank Trust Fund and that an appeal may be filed in the Circuit Court only after the Commission has entered a final decision.

COMMISSIONERS

WMB B. Bush
CC C. Coleman
ABSENT D. Hanby
JKH J. Hill
JM J. Mobley
JP J. Pascale
TS T. Schueck

JTS J. Shannon
ABSENT H. Watkins
URW R. Wilbourn
KEW W. Wright
ABSENT S. Yaich
RY R. Young

Julia P. Mobley
Chairman

SUBMITTED BY: Marsha Ballard PASSED: 01/23/98