

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT _____
Regulation No. 5.
Animal Waste Disposal

MINUTE ORDER NO. 98 - 59

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In 1997, the Chair of the Commission, Julia Peck Mobley, asked the Regulations Committee to review Regulation No. 5 and to recommend changes, if any, to the Commission. Regulation No. 5 applies to liquid animal waste management systems.

The Regulations Committee has held public hearings and received numerous comments concerning Regulation No. 5. On March 13, 1998, the Chair of the Regulations Committee, J. Randy Young, submitted draft recommendations to the Regulations Committee.

Committee discussion of the recommendations was concluded on December 3, 1998. The Regulations Committee voted to recommend to the Commission the adoption of the recommendations.

The Commission has considered the recommendations which are attached to this Minute Order as Attachment No. 1. The Commission hereby adopts the recommendations set forth in Attachment No. 1.

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SUBMITTED BY: R. Young PASSED: 12/04/98

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

Attachment No. 1 to Minute Order No. 98 - 59

Regulation 5 of the Arkansas Department of Pollution Control & Ecology was drafted by Governor Clinton's Animal Waste Task Force in response to an expressed need for a specific regulation for liquid manure systems. It was adopted by the Commission and went into effect July 1992. The most significant addition to the permitting process since that date was the implementing of an interim policy change in December, 1993, which was made by the Director of the Department to accommodate a change in farming practices to permit off-site nursery facilities.

More recently, Chairman Mobley asked the Regulations Committee to review Regulation 5 and to recommend changes, if any, to the Commission. The Regulations Committee has conducted a review of the Regulation and has invited interested parties and the public to comment at its meetings beginning July 11, 1997. The Commission also held public meetings on December 2 and 11, 1997 and January 20, 1998, at Nashville, Springdale, and Russellville, Arkansas, respectively. In addition, 192 letters had been received as of January 23, 1998. Of the 192 letters, 17 were FOR change to Regulation 5, and 175 were AGAINST change to Regulation 5. It should be noted that 172 of the 175 letters AGAINST were form letters. It should also be noted that of all the presenters and letters, that only one provided specific comments with recommended changes in the wording of Regulation 5.

The greatest opportunity at this time to respond to the issues raised at the public hearings is not by revising Regulation 5, but by changing the policy on enforcement.

Many of the presenters stated, and the producers themselves acknowledged, that there is at least a perceived, if not actual, lack of effective enforcement of the regulation. **Therefore, it is recommended that the Commission require for greater enforcement of Regulation 5 by providing more inspections on a regular basis. It is further recommended that Notices of Violations be issued at the time a violation is observed and not after an arbitrary grace period.** The need for additional staff may be offset by the offer on the part of the producers to share information developed by the integrator's agents is laudable. However, the effectiveness of self-policing is to be determined. This offer does not address the independent producers/permittees. **Therefore, the Commission recommends and supports the Director's effort in obtaining additional inspectors for the next biennium.**

Another area of concern is the lack of follow-up on the performance of a facility. This would answer questions about the effectiveness of the clay seal in the holding pond, the ability of the land to assimilate the nutrient loading, and the adequacy of the buffer distances. These issues could be addressed by limiting the period for which a permit is granted and requiring public notice and review before renewal of a permit. **Therefore, it is recommended that all permits be amended, if necessary, to include a definite renewal date.** This would also require the permittee to adopt current technology at the time of renewal and thus eliminate undesirable practices that might be continuing under grandfathered provisions. In setting the term of a permit, consideration should be given to the term of the financing of the facility, the term of the contract with the integrator, and the replacement life of the facility. Many of the permits for confined animal operations

have been issued under the EPA and State General Permits. These General Permits expire in December 1999, at which time it is anticipated that many of these issues will be revisited in their review and reissuance. The review of the General Permits will begin in mid 1999. Therefore, it is recommended that Regulation 5 be revised concurrently with the review and reissuance of the General Permits.

At that time, the following points will be considered under the rule-making provisions.

1. The technical revisions should incorporate interim policy changes such as the three-phase practice or those issues that have been raised in the appeals of permits or at the public hearings. Many of the technical issues would be addressed by resetting minimums or limits for the requirements that are presently in Regulation 5. In this manner, issues such as odors, pond liners, wetlands, floodplains, monitoring (both air and water), time for appeals, frequency of resubmission of withdrawn permit applications, co-liability of integrators, etc. could be publicly reviewed and established.
2. The editorial revisions should be an update to accommodate changes over time, such as changes in definitions, names, supercedence of references, and format.

In addition any proposed change that is submitted by an individual, group, or the Department will be considered if it is received by the Regulations Committee by June 1, 1999. Proposed changes should include a marked copy of Regulation 5 with the proposed changes. The original and a copy of the proposed changes should be sent to the Commission office and copies sent to the members of the Regulations Committee.

After reviewing the record, we conclude that the Commission considers initiating rule-making to Regulation 5 at the June 1999 Commission meeting to coincide with review of General Permits.

Therefore the Regulations Committee recommends that the record of its actions and comments be retained and incorporated into the review of the General Permits which expire in December 1999 and in the consideration by the Commission for initiating rule-making of Regulation 5.