

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

LOCATION - SUBJECT In The Matter of
United States Department of The Army Pine Bluff
Arsenal, United States Army Program Manager for
Chemical Weapons Demilitarization, and Raytheon
Demilitarization Company.

Docket No. 99-002-P
and
Docket No. 99-003-P

MINUTE ORDER NO. 99-11

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On January 15, 1999 the Arkansas Department of Pollution Control & Ecology issued air and hazardous waste permits for the construction and operation of chemical weapons incinerator facilities at the Pine Bluff Arsenal.

On February 12, 1999 eight organizations jointly filed a Third Party Request for Commission Review and Adjudicatory Hearing challenging the permits. Docket No. 99-002-P.

Arkansas Code Annotated § 8-4-205(c)(6) provides in pertinent part that:

During the pendency of the appeal to the Commission:

* * *

(B) The issuance . . . of a permit or that part of a permit which is the subject of the appeal shall be stayed;

(C) Notwithstanding [subdivision (B) above], upon application by any party, the Commission may . . . modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to any party.

Arkansas Pollution Control & Ecology Commission Regulation No. 8, Section 2.5.12(c) provides the procedures for seeking relief from an automatic stay:

A request [for relief from the automatic stay] must be in writing and filed with the Secretary. The Secretary shall promptly inform the Chairman of the filing of a request [for relief from the automatic stay]. The Chairman shall, in his discretion, either (1) grant a temporary stay, modify a stay, or terminate a stay, and such action shall be effect until the next regularly scheduled Commission meeting; or (2) direct the Secretary to place the request on the agenda for the next regularly scheduled Commission meeting; or (3) call a special Commission meeting for the purpose of considering a request. The Commission's decision on the request shall be in the

form of a Minute Order and shall state which specific terms or conditions are affected by the decision. The decision shall be promptly mailed by the Secretary to all parties of record.

On the same day that the third party appeal was filed, February 12, 1999, the Permittees filed a Joint Request for Partial Relief from the Automatic Stay. The Joint Request asked the Commission to modify the automatic stay to allow construction of the permitted facilities, but not their operation. The Permittees also asked the Chairman of the Commission to grant temporary relief immediately, pending consideration of the matter by the full Commission at its next regularly scheduled meeting.

The Permittees' Joint Request states that the delays in construction that will be caused by the automatic stay will result in substantial prejudice:

1. Delays will prolong the period during which the public is exposed to the risk of harm from continued storage of the aging chemical weapons stockpile at the Pine Bluff Arsenal;
2. Delays will jeopardize the ability of the United States to meet its treaty commitment to destroy all of the United States' chemical weapons stockpile by April 2007; and
3. Delays will disrupt contracting, with the result that many workers currently employed on the project will be laid off and may not be available for reemployment, preparatory work will be wasted, contract costs will escalate, cancellation fees will be incurred, and operational agreements will be jeopardized.

The Permittees' Joint Request also contends that none of the third party appellants filed any comments during the public comment period questioning the environmental impact or public safety of the construction process itself. The Permittees contend that as a consequence none of the appellants has standing to object to the Joint Request to proceed with construction. The Permittees acknowledge that if they are allowed to proceed with construction during the pendency of this appeal, they will do so at their risk that the permit appeal may be successful. The Permittees agree in their Joint Request that if construction is allowed to proceed, the fact that construction has commenced will not be considered in weighing the merits of the appellants' challenge to the permits.

On February 17, 1999 the Commission Secretary received from Tracy Mosley a second Third Party Request for Commission Review and Adjudicatory Hearing challenging the permits. Docket No. 99-003-P. On February 18, 1999 the Permittees filed a Request for Supplemental Relief from the Automatic Stay, which asked the Commission to make the partial relief from the

automatic stay requested in Docket No. 99-002-P equally applicable to the appeal in Docket No. 99-003-P.

The Arkansas Department of Pollution Control & Ecology staff has indicated that it supports the Partial Relief from the Automatic Stay requested by the Permittees.

Pursuant to Section 2.5.12(c) of APCEC Regulation No. 8 the Secretary forwarded the Permittees' Joint Request to the Chairman for immediate consideration. On February 16, 1999, the Chairman conducted an informal hearing by telephone conference call. After considering the presentation of the parties, the Chairman issued a letter ruling dated February 16, 1999, which granted temporary relief from the Automatic Stay, effective only until February 26, 1999, the date of the Commission's next regularly scheduled meeting. By a letter dated February 18, 1999, the Chairman directed that the partial relief from the automatic stay granted in his February 16 letter would be equally applicable to Docket No. 99-003-P.

On February 26, 1999 the full Commission considered the Permittees' Joint Request and heard from all of the parties present.

Based upon consideration of the parties' pleadings and presentations, the Commission finds and determines as follows:

1. The Permittees' Joint Request for Partial Relief from the Automatic Stay has been properly filed pursuant to the procedures set forth in APCEC Regulation No. 8 Section 2.5.12(c), and the matter is properly before the Commission in consideration.
2. The Permittees have established that they will suffer substantial prejudice if the automatic stay is not modified to allow construction. Therefore, the Permittees' Joint Request for Partial Relief from the Automatic Stay to allow construction to proceed during the pendency of this appeal should be and is hereby granted pending final disposition of these third party appeals.
3. The portions of the permits affected by this decision are those involving construction of the permitted facilities. This decision modifies the automatic stay of § 8-4-205(c)(6) to allow construction of the facilities authorized by the permits at issue in this appeal, but not to allow operation of the facilities.
4. Any actions and any expenditures taken by the Permittees in reliance on the modified stay are strictly at the Permittees' own risk and will not be relevant to deciding the merits of the permit appeals.

COMMISSIONERS

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CC C. Coleman
JG J. Goodhart
DH D. Hanby
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JM J. Mobley
JP J. Pascale
AS
Chair

TS T. Schueck
JS J. Shannon
LS L. Sickel
SV S. Varnell
WW W. Wright
RY Randy Young

SUBMITTED BY: ALLAN GATES PASSED: Feb 26, 1999