

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

LOCATION - SUBJECT
Adoption of Revisions to
Regulation No. 15, The
Arkansas Open-Cut Mining
and Land Reclamation Code.

Docket No. 99-005-R

MINUTE ORDER NO. 99 - 46

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A. HISTORY

On June 25, 1999, the Arkansas Pollution Control and Ecology Commission ("Commission") initiated a rule-making proceeding to consider adopting proposed amendments to Regulation No. 15. This regulation is known as "The Arkansas Open-Cut Mining and Land Reclamation Code." The proposed amendments to the regulation are called after this the "Initial Draft." Minute Order No. 99-26 established a procedural schedule for receiving public comments and making a final decision on the Initial Rule. It also found that continuing to issue mining permits under the current provisions of Regulation No. 15 constituted an imminent peril to the public health, safety, or welfare. Therefore, the Commission declared an emergency and implemented, as an emergency rule, the Initial Draft, effective June 25, 1999. See, *Minute Order No. 99-26 at page 6.*

Notice of the Initial Draft was published in the newspaper. The notice listed the dates of four public hearings, the last day to file written comments, and other information. Following the public hearings and receipt of written comments, the Crooked Creek Special Committee ("Special Committee") met and considered comments submitted by the public. On November 1, 1999, the Special Committee, based on comments from the public, approved revisions to the Initial Draft. These revisions are called after this the "Revised Draft."

The Revised Draft incorporates the amendments contained in the Initial Draft with certain exceptions. Those exceptions include a statement that Regulation No. 15 is a Commission regulation and include the addition of the definition of "Waterway" and the definition of "Ordinary High Water Mark" to the definition section. The Revised Draft also contains new language concerning the 100 foot and 110 foot buffer zones and new language concerning the survey requirement.

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The Special Committee agreed that the notice of the Revised Draft should be published in the newspaper according to A.C.A. § 8-4-202(d)(3)(Supp. 1999). The Special Committee set two public hearings for receiving comments, one in Yellville and one in Little Rock. The Yellville hearing will begin at 6:30 p.m., December 6, 1999, in the Yellville-Summit School District Cafeteria, Highway 14 North. The Little Rock hearing will begin at 7:00 p.m., December 7, 1999, in the Arkansas Game and Fish Commission Building, No. 2 Natural Resources Drive. The public may also file written comments no later than December 21, 1999.

The Special Committee also decided to recommend that the Commission declare an emergency and implement, as an emergency rule, the Revised Draft.

B. EMERGENCY RULE MAKING

Arkansas Code Annotated Section 8-4-202(e)(1)(Supp. 1999) states:

"If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules, or immediate suspension, or moratorium on categories or types of permits, it may after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria."

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Arkansas Code Annotated § 8-4-202(e)(2)(Supp. 1999) provides that no regulation "adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days." The Initial Draft, which the Commission declared as an emergency rule on June 25, 1999, expires on December 23, 1999.

The Commission believes that most of the reasons described in Minute Order No. 99-26 for adopting and implementing the Initial Draft as an emergency rule are still valid. Therefore, the Commission determines that imminent peril to the public health, safety, or welfare requires making immediate changes to the Initial Draft. The facts and reasons for this determination are as follows:

A. On March 10, 1999, the Special Committee viewed Crooked Creek and gravel mining operations downstream from Yellville, Arkansas and at a site of a prospective gravel mine near Kelly's Slab. *Committee Report, June 25, 1999, at page 1.* The Special Committee observed sites designated as Mining Permit Numbers 466 and 484. The Special Committee found a twenty-five (25) foot wide undisturbed buffer zone that was not being maintained between the mined area and the creek channel edge. The Special Committee also observed that adequate provisions were not being made to protect the creek from degradation of its water quality. The Special Committee also found that little, if any, of the mined areas along the stream channel had actually been reclaimed. *Committee Report, June 25, 1999, at pages 4-5.*

B. The Special Committee considered photographs of an aerial view of open-cut mine sites adjacent to Crooked Creek east of Yellville. These sites were identified as Mining Permit Numbers 466, 478, and 484. These photographs show broken buffers and mining sites that have not been reclaimed. *Photographs of an Aerial View of Crooked Creek.*

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C. The Special Committee considered the results of a study conducted by Mr. Martin Maner and Mr. Mike Rodgers of the Department of Environmental Quality. The study is entitled: Assessment of Gravel Mining on Channel Stability and Other Factors in Crooked Creek. The study investigated twenty streams where gravel mining takes place and evaluated the effects of in-channel gravel mining. Some results of the study show: changes in the stream water temperature, loss of fish cover, sand and silt increased downstream of mined sites, and stream channel geometry different at disturbed sites compared with least disturbed sites. The study recommends that gravel mining should not take place below the bankfull depth elevation.

D. Following the receipt of public comments on the Initial Draft, the Special Committee decided that revisions should be made to address the comments received from the public.

E. Various committees of the legislature have not yet had the opportunity to review the Revised Draft. After the public comment period ends, the Legislative Council will be notified that the Revised Draft is ready for legislative review.

Based on the above facts, the Commission finds that the Initial Draft adopted on June 25, 1999, should no longer remain in effect. Therefore, the Commission terminates the Initial Draft effective the close of business on December 3, 1999.

Although the Commission takes the above action, it still finds that the existing version of Regulation No. 15 does not adequately protect the land, water quality and integrity of streams in Arkansas. The Commission finds that issuing a mining permit under the existing version of Regulation No. 15 constitutes an imminent peril to the public health, safety, or welfare. The November 1,

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1999 revisions to Regulation No. 15 results in the formation of a revised rule. Therefore, the Commission declares an emergency and implements, as an emergency rule, the revisions to Regulation No. 15 (Revised Draft) made on November 1, 1999. The Revised Draft shall become effective on December 4, 1999.

COMMISSIONERS

_____	B. Ackerman	_____	T.F. Robinson
NO	G. Black	_____	T. Schueck
MB	B. Bush	JTS	J. Shannon
D.P.	D. Featherstone	_____	L. Sickel
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Chair

SUBMITTED BY: Goodhart PASSED: 12/03/99