

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**REGULAR COMMISSION MEETING
9:00 a.m., Friday, December 3, 2010**

**Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas**

Commissioners Attending: J. Bates, L. Bengal, J. Chamberlin, S. Henderson, D. Hendrix, D. Samples, J. Shannon, J. Simpson, W. Thompson, and R. Young.

Commissioners Absent: L. Sickel and B. White.

Visitors: Chuck Nestrud, Chisenhall, Nestrud & Julian; Terry Horton, FTN Associates; Mark Allison, Dover, Dixon, and Horne; Kendra Jones, Attorney General's Office; Gene Dunaway, Friends of North Fork & White Rivers; Lee Moore, The Nature Conservancy; Allan Gates, Mitchell, Williams, Selig, Gates & Woodyard; Al Eckert, Quattlebaum, Grooms, Tull & Burrow; Tom Jones, Arkansas Reclamation Company; Randy Thurman and Steve Weaver, Arkansas Environmental Federation; Craig Noble, City Corporation; Greg Phillips, GBMc & Associates; Allen Carter, Benton; Billy Wilson, Lewisville; Dr. Joe Nix, Arkadelphia; and Jim Malcom, FTN Associates.

Call to Order

Chair Hendrix called the meeting to order at 9:00 a.m.

Chair Hendrix announced and read J.D. Lowery's resignation letter to the Commission.

Quorum

Commission Secretary called roll and announced that a quorum was present.

Approval of Minutes

Chair Hendrix asked for a motion approving the September 2010 meeting minutes. Commissioner Young made a motion to approve the minutes. Commissioner Thompson seconded the motion. The motion passed.

Director's Report

Director Teresa Marks announced an upcoming meeting in Huntsville regarding gravel mining. She also discussed an upcoming stakeholders meeting with various groups regarding new air regulations.

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Director Marks discussed the Arkansas Department of Environmental Quality's ("ADEQ") proposed legislative bills for the upcoming 2011 session.

She commended the Water Division staff for the success of the Watershed Advisory Conference in Mountain View.

She announced a scheduled public meeting regarding the Illinois TMDL issues.

Commissioners asked questions and discussion followed.

Public Comments

William Eckert

Mr. Eckert representing Umetco Minerals Corporation ("Umetco") updated the Commission regarding the proposed Regulation No. 2, Third-Party Rulemaking.

Allen Carter

Mr. Carter of Benton discussed the proposed Umetco Third-Party Rulemaking and asked ADEQ and Umetco to keep the public updated regarding the rulemaking.

Gene Dunaway

Mr. Dunaway representing Friends of the Northfork and White Rivers updated the Commission regarding frac sand mining in IZARD County.

Tom Jones

Mr. Jones, representing Arkansas Reclamation Company updated the commission with the work being done at their facility.

Commission Reports

A. Chair Darwin Hendrix

1. 2011 Meeting Dates and Locations

Chair Hendrix asked for a motion approving the 2011 Meeting Dates and Locations. Commissioner Shannon made a motion to approve the minute order. Commissioner Samples seconded the motion. The motion passed. (Minute Order No. 09-41).

B. Regulations Committee - Randy Young

1. Regulation No. 2, El Dorado Chemical Company Third-Party Rulemaking; Docket No. 06-009-R

Commissioner Young stated that El Dorado Chemical Company ("El Dorado") filed a Motion to Adopt Proposed Changes to Regulation No. 2. El Dorado is requesting to amend the water quality

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standards for certain designated stream segments. The rulemaking was approved by the Commission through Minute Order 07-19, but was not approved by the Environmental Protection Agency ("EPA"). El Dorado filed a petition to re-open the rulemaking to provide public comment on additional information prepared in support of the previously enacted rule, to rescind part of the rule, and to otherwise address EPA's comments.

Commissioner Young made a motion to adopt the amendments to Regulation No. 2 and Commissioner Shannon seconded the motion. The motion passed. **(Minute Order No. 10-42)**

2. Regulation No. 2, McGeorge Contracting Co., Inc. ("McGeorge") Third-Party Rulemaking; Docket No. 09-003-R.

Commissioner Young stated that McGeorge had filed a Request for Adoption of Corrected Minute Order. The initial minute order approving the proposed changes reflected a change in the sulfate criteria for McGeorge Creek (headwaters to Willow Springs Branch) to 257 mg/L. The correct value should have been 250 mg/L and McGeorge asks that the typographical error be corrected to accurately reflect the change that was proposed. ADEQ supports this correction.

Commissioner Young made a motion to adopt the corrections to Regulation No. 2 and Commissioner Chamberlin seconded the motion. The motion passed. **(Minute Order No. 10-43)**

3. Regulation No. 34, State Water Permit Regulation; Docket No. 10-008-R.

Commissioner Young stated that ADEQ has filed a new regulation intended to provide a permit by rule to cover wastes that are not discharged into waters of the State but are stored, disposed, or discharged in a manner that, if unregulated, will cause or are likely to cause pollution to waters of the State. ADEQ proposes to initiate this regulation with provisions relating to the construction, operation, and closure of pits associated with oil and gas wells. This activity was initially regulated by issuing a general permit under ADEQ's statutory permitting authority found in the water regulation. However, the authority to issue these general permits resulted in a case being filed in Union County Circuit Court. As a result of that lawsuit, ADEQ was approached by the Arkansas Oil and Gas Commission ("AOGC") about promulgating joint rules that would encompass the provisions of ADEQ's general permit and provide consistency in the regulatory efforts of both agencies. The proposed Regulation No. 34, if adopted, will incorporate the provisions of AOGC's Rule B-17 by reference.

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Commissioner Young made a motion to initiate the rulemaking process to Regulation No. 34 and Commissioner Chamberlin seconded the motion. The motion passed. **(Minute Order No. 10-44)**

Administrative Hearing Officer-Charles Moulton

A. Recommended Decision

**In the Matter of Foy and Judy Brown d/b/a Green Grow Disposal;
Docket No. 10-010-NOV**

Judge Charles Moulton stated that a Recommended Decision (Order No. 5) had been filed and asked the Commission to adopt Order No. 5 (Recommended Decision).

Commissioner Thompson made a motion to adopt the minute order adopting Order No. 5 and Commissioner Simpson seconded the motion. The motion passed. **(Minute Order No. 10-45)**

B. Settled Cases per Regulation No. 8

1. In the Matter of Terry Gheta; Docket No. 10-001-NOV

Judge Moulton reported that the parties had met and resolved the issues and filed a Consent Administrative Order. The case is closed.

Appeals to Circuit Court

Charles Moulton updated the Commission regarding the El Dorado Joint Pipeline permit appeal, the Southwestern Electric Power Company permit appeal and the Prairie County Land Farm LLC permit appeal.

Commissioners asked questions and discussion followed.

Adjourn

There being no further business the meeting was adjourned.

THE NEXT COMMISSION MEETING IS SCHEDULED FOR 9:00 a.m., Friday, January 28, 2011.

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**APPROVED MINUTE ORDERS
REGULAR COMMISSION MEETING**

- 10-41** The Commission adopted a Minute Order adopting the 2011 Meeting Dates and Locations.
- 10-42** The Commission adopted a Minute Order adopting the amendments to El Dorado Chemical Company Third-Party Rulemaking; Docket No. 06-009-R.
- 10-43** The Commission adopted a Minute Order adopting the corrections for McGeorge Contracting Co., Inc. ("McGeorge") Third-Party Rulemaking; Docket No. 09-003-R.
- 10-44** The Commission adopted a Minute Order initiating the rulemaking process for Regulation No. 34, State Water Permit Regulation; Docket No. 10-008-R.
- 10-45** The Commission adopted a Minute Order adopting Order No. 5 (Recommended Decision) in the Matter of Foy and Judy Brown d/b/a Green Grow Disposal; Docket No. 10-010-NOV.