

EXHIBIT H

Proposed Minute Order

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT-Regulation No. 2
Water Quality Standards
Third-Party Rulemaking
McGEORGE CONTRACTING CO., INC
PINE BLUFF, AR**

DOCKET NO. 09-003-R

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On August 25, 2009, McGeorge Contracting Co., ("McGeorge") Inc. filed a Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2, Water Quality Standards ("Petition"). Pursuant to Ark. Code Ann. § 8-4-202 (c), the Arkansas Pollution Control and Ecology Commission ("Commission") has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking. The Petition has been designated as Docket No. 09-003R.

The Commission's Regulations Committee met on September 25, 2009 to review the McGeorge Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revision to Regulation No. 2. The Regulations Committee also recommends adoption of the following procedures and schedule.

1. McGeorge and the Arkansas Department of Environmental Quality ("ADEQ") shall file an original and one (1) copy and a computer disk in Word of all materials required under this Minute Order. This requirement does not apply to transcripts.

2. Persons submitting written public comments shall submit them to ADEQ and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.

3. McGeorge will submit to the ADEQ's Public Outreach and Assistance Division ("POA"), the following:

- a. A proposed public notice to be used in mailing notice to interested persons, for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, in the ADEQ's discretion, be approved for use or ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No.

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8.803. The public notice shall be published not later than 45 days prior to the first public hearing. By agreement, McGeorge shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade or professional publications chosen by the Commission and shall file only the original proof of publication with the Commission. ADEQ shall be responsible for mailing the public notice to all persons who have requested advance notice of rulemaking proceedings and the cost of the mailing.

b. Fifty (50) copies of the executive summary of the proposed rulemaking.

c. Bound copies of the Petition and all supporting documentation, the number of which is to be determined by POA

4. A public hearing or hearings shall be conducted the week of November 16, 2009 in Little Rock, Pulaski County, Arkansas. The exact date, time and location of the public hearing will be determined by the ADEQ's Public Outreach and Assistance Division.

5. The period for receiving all written comments by the public, McGeorge, and the ADEQ shall conclude ten (10) business days after the date of the public hearing unless an extension of time is granted.

6. McGeorge and the ADEQ shall each file, not later than 14 days before the Commission meets to consider adoption of the proposed regulation, a Statement of Basis and Purpose and Responsive Summary as required by Regulation No. 8.815. In addition, McGeorge and ADEQ shall file a proposed Minute Order deciding this matter.

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7. The ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee and the Commission may consider this matter at their January 22 ,2010 meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative committee. Members of the Regulations Committee may ask questions of any persons that made oral or written comments and it will make a recommendation to the Commission.

9. At the Commission's meeting, the presentation of oral statements and legal arguments will be regulated as follows:

- a. The Chair of the Commission will permit members of the public to make statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.
- b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.
- c. Legal counsel or other designated persons representing McGeorge and the ADEQ shall be permitted ten (10) minutes in which to address the Commission.
- d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any

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questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. If McGeorge desires a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, McGeorge agrees to pay all costs for the preparation of the transcript of the public hearing, Regulations Committee meetings and Commission meetings which concern this docket and occur after the adoption of this Minute Order. If transcript is required, McGeorge will employ the court reporter and the court reporter shall deliver the original transcript to the Commission Secretary.

11. The Commission find the proposed regulation does not affect small business.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

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COMMISSIONERS:

_____ **J. Simpson**
_____ **D. Hendrix**
_____ **L. Bengel**
_____ **S. Henderson**
_____ **C. McGrew**
_____ **D. Samples**

_____ **J. Chamberlin**
_____ **J. Shannon**
_____ **L. Sickel**
_____ **E. Valdez**
_____ **B. White**
_____ **R. Young**

Chair, W. Thompson

Submitted by: Charles R. Nestrud

DATE PASSED: _____