

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT - Regulation No. 2
Water Quality Standards
Third-Party Rulemaking
UMETCO Minerals Corporation
d/b/a Wilson Mine
2754 Compass Drive, Suite 280
Grand Junction, CO 81506-8741**

MINUTE ORDER NO. _____

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On June 14, 2009, UMETCO Minerals Corporation (“UMETCO”) filed a Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2, Water Quality Standards. 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. _____.

The Commission’s Regulations Committee met on June 25, 2010, and voted to refer UMETCO’s Petition to the full Commission with recommendation to initiate rulemaking proceedings. In connection with its Petition, UMETCO proposed adoption of the following procedural schedule so consideration of this matter may proceed in an efficient and orderly manner.

1. UMETCO shall file an original and twenty-five (25) copies and a disk containing all materials required under this Minute Order. Any other party filing any pleading in this docket with the Commission Secretary shall file an original and two (2) copies and a disk containing the pleading and all other materials filed with it; and the party shall serve on UMETCO, a copy of the pleading and all materials filed with the Commission.

2. Persons submitting written public comments shall submit their written comments to the ADEQ. Within ten (10) business days following the adoption or denial of the proposed rule, the ADEQ shall deliver the originals of all comments to the Commission Secretary.

3. UMETCO has filed with the Petition a black-lined version of the section of Regulation No. 2 which will be amended by the proposed rule.

4. UMETCO has submitted to the ADEQ's public affairs office, 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 the ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8.803. The public notice shall be published not later than 45 days prior to the first public hearing. By agreement, UMETCO shall pay the

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costs of the newspaper publications and the costs of the appropriate industry, trade or professional publications chosen by the Commission. UMETCO shall file only the original proof of publication with the Commission. The 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. Sixty-five (65) copies of the executive summary of the proposed rulemaking.
- c. Eight (8) bound copies of the Petition and all supporting documentation.

5. A public hearing on the proposal shall be conducted the week of August 16, 2010 in Garland County, Arkansas. The exact date, time, and location for each hearing will be determined by the ADEQ Public Outreach and Assistance Division ("POA").

6. The period for receiving all written comments by the public, UMETCO and the ADEQ shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8.806, unless an extension of time is granted.

7. UMETCO and the ADEQ shall each file, not later than October 8, 2010, a Statement of Basis and Responsiveness Summary as required by Regulation No. 8.815.

8. UMETCO and the ADEQ shall each file not later than October 8, 2010, a proposed Minute Order deciding the matter.

9. 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.

10. The Regulations Committee will consider this matter at its October, 2010, meeting unless this proposed rule has not been reviewed by the Joint Interim Committee on Public Health and Welfare and the Joint Interim Committee on Administrative Rules and Regulations. In the event that this proposed rule has not been reviewed by the Legislative Committees prior to the October, 2010, Regulations Committee Meeting, this proposed rule shall be considered at the next

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Regulations Committee Meeting following the review by the appropriate Legislative Committees. Members of the Regulations Committee may ask questions of any persons that made oral or written comments. The Regulations Committee will make a recommendation to the Committee.

11. At 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 a 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 UMETCO 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 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.

12. If UMETCO desires a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, agrees to pay all costs for the preparation of a transcript of the public hearings, Regulations Committee meetings and Commission

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meetings which concern this docket and occur after the adoption of the Minute Order. If transcript of the rulemaking proceedings is required, the court report will be employed by UMETCO, and the court reporter shall deliver the original transcript to the Commission Secretary.

13. The Commission authorizes the Chair of the Regulations Committee, in consultation with the Chair of the Commission, to revise the procedures and schedules set out above.

14. Executive Order 05-04 requires that the Commission determine whether a proposed rule affects small businesses. Based on the information contained in the Petition and the explanation given by UMETCO and its counsel, the Commission finds the proposed amendment to Regulation No. 2 does not affect small businesses. Therefore, the Commission concludes that the procedures set forth in Executive Order 05-04 are not applicable to the proposed amendment to Regulation No. 2.

Having considered the Petition and the written and oral comments, thereon, the Commission hereby initiates the rulemaking proceeding in this docket. The Commission also adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS

**D. Hendrix
L. Bengal
S. Henderson
C. McGrew
J. Chamberlain
D. Samples
J. Simpson**

**J. Shannon
L. Sickel
W. Thompson
J. Lowery
B. White
R. Young**

Chair, J. Simpson

SUBMITTED BY: William A. Eckert PASSED: _____

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