

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AN EMERGENCY) DOCKET NO. 02-009-R
RULE TO AMEND REGULATION NO. 9,)
PERMIT FEES REGULATION)

PETITION TO ADOPT AN EMERGENCY RULE TO AMEND REGULATION NO. 9,
PERMIT FEES REGULATION, AND TO INITIATE RULEMAKING

Commissioner Randy Young for his Petition to Adopt an Emergency Rule to Amend Regulation No. 9, Permit Fees Regulation, and to Initiate Rulemaking, states as follows:

1. Commissioner Young is a member of the Arkansas Pollution Control and Ecology Commission.

2. Tyson Foods, Inc. ("Tyson") has notified owners or operators of hog farms that it is terminating the contracts it has with those hog farmers. More than one hundred hog farms are affected by the decision to terminate the contracts.

3. The termination of these contracts will have a detrimental financial impact on the owners or operators of hog farms that have a permit issued to them under Regulation No. 5, Liquid Animal Waste Management Systems. Commissioner Young asserts that this constitutes an imminent peril to the public health, safety, or welfare of the citizens of Arkansas. A.C.A.

§8-4-202(e)(1). Termination of the contracts may result in the owners or operators filing for bankruptcy, abandoning their farms, or not properly closing the facility, which could lead to pollution of the waters of the state.

4. Commissioner Young requests that the Commission adopt an emergency rule that requires no payment of the annual permit fee for owners or operators of hog farms that seek to have their permit placed on inactive status. Adoption of an emergency rule creates an incentive for owners or operators to continue complying with the conditions in their permit without incurring the annual permit fee set forth in Regulation No. 9.

5. The amendment to Regulation No. 9 is attached as Exhibit "A" and is set forth in Section 9.402(D). The amendment to this section of the rule provides:

a. The owner or operator may apply for inactive status of the permit issued under Regulation No. 5 by submitting a written request to the Arkansas Department of Environmental Quality ("Department") seeking inactive status and by submitting a copy of the letter terminating the contract.

b. The Department shall notify the owner or operator that the permit has been placed on inactive status and the owner or operator will not pay an annual fee during the time the permit is on inactive status.

c. The owner or operator shall continue to comply with all the conditions contained in the permit.

d. The inactive status of the permit will terminate two years after the date of the contract termination.

e. The owner or operator must notify the Department within thirty (30) days after continuing hog farm operations.

5. A financial impact statement is attached as Exhibit "B" and a Questionnaire is attached as Exhibit "C".

6. Commissioner Young also requests the Commission to initiate the rulemaking process to make this a permanent rule. Attached as Exhibit "D" is a proposed Minute Order adopting the emergency rule and Exhibit "E" is a proposed Minute Order initiating the rulemaking process.

WHEREFORE, Commissioner Young requests the Commission to adopt the proposed Minute Order amending Regulation No. 9 and the proposed Minute Order initiating the rulemaking process.

Respectfully submitted,

**Commissioner Randy Young
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