



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

C&H Hog Farms, Inc. (Newton County, Arkansas) Request for Adjudicatory Hearing of Arkansas Department of Environmental Quality Denial of Permit

01/29/2018

C&H Hog Farms, Inc. ("C&H") filed a January 18th Request for Adjudicatory Hearing and Commission Review ("Request") challenging the Arkansas Department of Environmental Quality ("ADEQ") denial of an application for a Regulation 5 permit.

Regulation 5 addresses "liquid animal waste management systems."

As noted in a previous post, ADEQ's "Notice of Final Permitting Decision" was issued on January 10th ([see previous blog post here](#)).

ADEQ described the existing facility (previously permitted under Regulation 6) as a sow-farrowing facility. The C&H facility is located near the community of Mt. Judea in Newton County, Arkansas.

C&H's Request raises four issues which include:

1. Denial of the Permit was not an Option
2. The Decision was Procedurally Flawed Due to Failure to Provide Notice and Comment
3. The Permit Decision was Arbitrary, Capricious and ADEQ Should be Estopped from Denying the Permit for the Reasons Stated in the Statement of Basis
4. The Statements Contained in the Responsiveness Summary do not Reflect the Rationale for the Permit Decision and Should not be Considered in this Appeal, but to the Extent the Responses to Comments are Considered, they are Inappropriate to Support the Permit Decision

C&H had prior to its Request, pursuant to Arkansas Pollution Control and Ecology Commission ("Commission") Reg. 8.612, on January 11th sought a stay from the Commission of the permitting decision. The Commission found that:

... continuing to allow C&H to operate pursuant to the terms and conditions of Permit No. ARG590001 is fair and equitable and substantial prejudice will result to C&H if C&H is required to implement an immediate closure of its facility at this juncture.

The facility had previously been operating under a Regulation No. 6 permit. The temporary stay allows it to continue to operate under this Permit until February 10, 2018 (i.e., the date a Request for Commission Review of the Director's decision to deny Permit No. 5264-W is due.) The Commission further determined:

If C&H files a timely Request for Commission Review of the Director's decision to deny C&H Permit No. 5264-W with the Commission, then the Commission will continue this temporary stay until the completion of the Commission's administrative review process.

[A copy of the Request \(without the exhibits\) and Minute Order No. 18-01 \(addressing the stay request\) can be downloaded here.](#)