

C & H Hog Farms, Inc. (Newton County, Arkansas): Arkansas Pollution Control and Ecology Commission Administrative Law Judge Recommended Decision



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Arkansas Pollution Control and Ecology Commission (“Commission”) Administrative Law Judge (“ALJ”) Charles Moulton issued a July 10th Recommended Decision (“RD”) in administrative proceedings involving C & H Hog Farms, Inc. (“C & H”). See In the Matter of C & H Hog Farms, Inc. Docket No. 18-001-P (Order No. 14).

C & H had filed a Request for Commission Review and Adjudicatory Hearing (“Request”) before the Commission challenging the Arkansas Department of Environmental Quality’s (“ADEQ”) denial of an application for a Regulation 5 permit related to its sow-farrowing facility in Newton County, Arkansas.

Regulation No. 5 addresses liquid animal waste management systems.

Besides C & H and ADEQ, parties in the proceedings include the Ozark Society, Buffalo River Watershed Alliance, Arkansas Canoe Club, and three individuals.

The ALJ’s RD references the following motions filed by the parties:

- C & H Motion for Summary Judgment
- Buffalo River Watershed Alliance/Arkansas Canoe Club Response to C & H Motion for Summary Judgment
- ADEQ/Ozark Society Response to C & H Motion
- C & H Reply

ALJ Moulton describes the remaining issues in C & H’s Request for Adjudicatory Hearing and Commission Review as:

1. ADEQ’s decision to deny C&H a Regulation No. 5 permit was procedurally flawed because the decision did not provide notice and comment; and
2. ADEQ’s decision to not issue C&H a Regulation No. 5 permit was wrong and ADEQ should be estopped from denying C & H a Regulation No. 5 permit for the reasons stated in the draft permit’s statement of basis; and

3. Certain statements contained in ADEQ's responsive summary do not reflect the rationale for the permit decision and should not be considered, but to the extent the responses to comments are considered, they are inappropriate to support the permit decision.

The ALJ concludes as to Issue 1 that:

ADEQ's decision to deny C&H a Regulation No. 5 permit was procedurally flawed because the decision did not provide notice and comment.

The remainder of the substantive portion of the RD provides the ALJ's analysis of Issue 1 and discusses:

- Regulation No. 8
- Non-Arkansas case law
- Number of comment periods required per permit application, Ark. Code Ann. § 8-4-203(e)(1)(C)(i)

The ALJ concludes that ADEQ's decision to deny C & H the permit was procedurally flawed because the decision did not provide an opportunity for notice and comment.

Because of the ALJ's decision on Issue 1, he deems the remaining issues that have arisen in the appeal as moot.

The ALJ concludes by ordering ADEQ to issue its denial of C & H's Regulation No. 5 permit as a draft denial and accept public comment on that draft decision for a period of at least 30 days .

The RD will now be considered by the Commission which can either affirm, deny, or modify it.

A [copy of the RD](#) can be found here.