

IN THE CIRCUIT COURT OF NEWTON COUNTY, ARKANSAS

C&H HOG FARMS, INC.

PLAINTIFF

VS.

CASE NO. 51CV-18-68

**ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY**

DEFENDANT

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MOTION FOR CHANGE OF VENUE OR, ALTERNATIVELY, MOTION TO DISMISS**

Comes now the Arkansas Department of Environmental Quality, by and through its attorney, Daniel Pilkington, and for its Motion for Change of Venue or, Alternatively, Motion to Dismiss, states as follows:

I. MOTION FOR CHANGE OF VENUE

**Change of Venue to Pulaski County Circuit Court is Mandated
by Law Upon Request by ADEQ Pursuant to
Act 967 of 2017 and Ark. Code Ann. § 16-60-201(e)**

1. Plaintiff C&H Hog Farms Inc. filed a Complaint for Violation of the Arkansas Freedom of Information Act of 1967 (FOIA) in this matter on October 16, 2018, before the Circuit Court of Newton County, asserting that the Arkansas Department of Environmental Quality (ADEQ) had denied Plaintiff its rights under the FOIA.

2. The Arkansas FOIA, at Ark. Code Ann. §25-19-107(a), provides that any citizen denied his or her rights granted under the FOIA may appeal from the denial to the Pulaski

County Circuit Court or to the circuit court of the residence of the aggrieved party if the State of Arkansas or a department, agency, or institution of the state is involved.¹

3. The venue statute at Ark. Code Ann. §16-60-104(3)(A) provides that a civil action against the state, or against a state board, commission, or state officer because of his or her or the state board's official acts shall be brought in Pulaski County. However, subsection (B) of Ark. Code Ann. §16-60-104(3) further provides that, if such action could otherwise be brought in another county under the venue laws of the state, then the civil action may be brought either in Pulaski County or in the other county.²

4. It is clear from the above-cited statutes that venue for Plaintiff C&H Hog Farms, Inc.'s filing of its complaint was proper in Newton County Circuit Court. It is further clear from those same statutes that venue for such civil action against a state agency such as ADEQ would also be entirely proper in Pulaski County Circuit Court.

5. Notwithstanding the propriety of venue for Plaintiff's filing of its complaint in Newton County Circuit Court under the above-referenced statutes, the Arkansas General Assembly in 2017 approved Act 967 of 2017, codified in Ark. Code Ann. §16-60-201(e), that provides, in pertinent part:

¹ Ark. Code Ann. § 25-19-107(a): "Any citizen denied the rights granted to him or her by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if the State of Arkansas or a department, agency, or institution of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved."

² Ark. Code Ann. § 16-60-104. Actions that shall be brought in Pulaski County.
The following civil actions shall be brought in Pulaski County:

(3)

(A) A civil action against the state or a civil action against a state board, state commissioner, or state officer because of his or her or the state board's official acts.

(B) However, if a civil action could otherwise be brought in another county or counties under the venue laws of this state, including without limitation this subchapter, then the civil action may be brought either in Pulaski County or the other county or counties[.]

(e)(1) A defendant in a civil action under §16-60-104(3) may obtain an order for a change of venue by motion requesting a transfer to one (1) of the following counties:

(A) Pulaski County;

(B) Any county in which one (1) of the plaintiffs, or in the case of a certified class action, any member of the class, resides, conducts business, or maintains a principal place of business; or

(C) If no plaintiff is a resident of Arkansas, any county in the state of Arkansas.

(2) The venue of the civil action *shall be changed* upon a showing that the proposed transferee county is a proper venue as set forth in this subsection.

[Emphasis added.]

6. When a change of venue to Pulaski County pursuant to Ark. Code Ann. § 16-60-201(e)(1)(A) is requested by the state as defendant in a civil action as in the case at hand, that transfer is mandatory under the plain language of Ark. Code Ann. § 16-60-201(e)(2).

7. ADEQ respectfully requests that the Court immediately transfer venue of this matter to Pulaski County Circuit Court under the mandatory provisions of Act 967 of 2017 as codified in Ark. Code Ann. § 16-60-201(e).

II. MOTION TO DISMISS

C&H's Complaint Should Be Dismissed for Improper Venue Pursuant to Arkansas Rules of Civil Procedure 12(b)(3)

8. Should the Court not grant ADEQ's requested change of venue to Pulaski County mandated by Ark. Code Ann. § 16-60-201(e), then alternatively ADEQ moves this Court to dismiss the complaint pursuant to Ark. R. Civ. P. 12(b)(3). While venue in Newton County may not have been improper at the time of the complaint's filing, the plain language of Act 967 of 2017 as codified in Ark. Code Ann. § 16-60-201(e) mandating transfer to Pulaski County as requested by ADEQ makes venue improper in Newton County.

**C&H's Complaint Should Be Dismissed for Failure to State
Facts Upon Which Relief Can Be Granted Pursuant to
Arkansas Rules of Civil Procedure 12(b)(6)**

9. C&H submitted a FOIA request via email to ADEQ on October 10, 2018.

(Exhibit 3 to Plaintiff's complaint.)

10. ADEQ timely responded to C&H's FOIA request, providing a link via its website to the database where the bulk of the requested records could be accessed, searched, downloaded and copied, and seeking clarification and specificity needed to identify and locate any additional records that might be responsive to the request. (Exhibit 4 to Plaintiff's complaint.)

11. ADEQ has not asserted that any requested records are exempt from disclosure under FOIA and has provided free and ready access to the requested public records allowing for the full exercise of the right to inspect and copy those records in a reasonable and good-faith effort to fully comply with the requirements of the FOIA, including Ark. Code Ann. §25-19-105(d). ADEQ asserts its continued intent to fully comply with FOIA and provide all records responsive to any request that enables the identification of requested records with reasonable effort.

12. C&H has failed to state facts supporting its claim that it has been denied rights granted under FOIA as required by Ark. Code Ann. § 25-19-107(a). Should the Court not grant ADEQ's requested change of venue to Pulaski County mandated by Ark. Code Ann. § 16-60-201(e), ADEQ moves the Court to dismiss the complaint pursuant to Ark. R. Civ. P. 12(b)(6) for failure to state facts upon which relief can be granted.

**C&H's Complaint Should be Dismissed under Arkansas Rules
of Civil Procedure 12(b)(6) as it
Impermissibly Seeks
Relief That is not Proper Upon the Facts Stated**

13. C&H asserts a baseless claim, unsupported by fact, that C&H was denied rights granted under FOIA by ADEQ. ADEQ's FOIA response to C&H acknowledged that all requested public records that could be reasonably identified and located were freely available for inspection and copying. C&H's complaint further seeks relief far beyond any provided by FOIA by asking this Court to improperly insert itself into a pending administrative permitting procedure that is unrelated to any asserted violation of FOIA.

14. C&H has already filed two appeals of Arkansas Pollution Control and Ecology Commission decisions related to that ongoing administrative permitting procedure that are currently pending in two separate dockets in Newton County Circuit Court³. ADEQ is not a party in either matter. C&H has raised its arguments about the ongoing administrative permitting procedure in those dockets and has sought and obtained a stay of the Arkansas Pollution Control and Ecology Commission's order entered as part of that administrative proceeding.

15. In the matter at hand, C&H asserts a baseless challenge against ADEQ under FOIA to obtain relief it has already sought in other matters pending before the Newton County Circuit Court. This is a transparent attempt to improperly use a FOIA claim against ADEQ to subvert a pending administrative action by having this Court improperly order ADEQ to extend a comment period and further delay any possible administrative proceeding. By seeking such an improper action in its FOIA complaint, C&H reveals that this action was initiated for frivolous or

³ C&H's complaint references Case No. 51CV-18-58 in its prayer for relief. The other matter is Case No. 51CV-18-48.

dilatory purposes in contravention of the purpose of FOIA and interposed for an improper purpose to cause unnecessary delay and needlessly increase the costs of litigation.

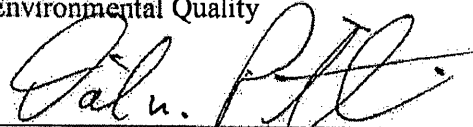
16. Should the Court not grant ADEQ's requested change of venue to Pulaski County mandated by Ark. Code Ann. § 16-60-201(e), ADEQ moves the Court to dismiss the Complaint pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

WHEREFORE, Defendant prays that its Motion for Change of Venue be granted immediately, or in the alternative that the complaint be dismissed, and for all other just and appropriate relief.

Respectfully submitted,

Arkansas Department of
Environmental Quality

By:


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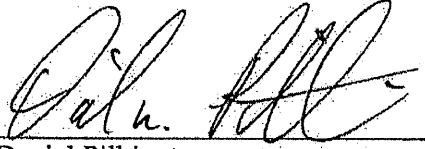
CERTIFICATE OF SERVICE

I, Daniel Pilkington, do hereby certify that a true and accurate copy of the foregoing Motion for Change of Venue was served upon the parties' attorney(s) listed below by email and by placing a copy of the same in the United States Mail, postage pre-paid, or by another acceptable means under the Arkansas Rules of Civil Procedure on this the 2nd day of November, 2018.

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