

C & H Hog Farms, Inc. (Newton County, Arkansas) Proceedings: Order Denying Request for Preliminary Hearing Continuance/Motion to Reconsider



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Administrative Law Judge (“ALJ”) Charles Moulton issued Order No. 2 in the C & H Hog Farms, Inc. (“C & H”) Arkansas Pollution Control and Ecology Commission (“Commission”) proceedings which denied C & H’s Motion to Continue the preliminary hearing that had been set for January 4th. See Docket No. 18-004-P. (A link to the previous request can be found [here](#).)

C & H subsequently filed on January 2nd a Motion to Reconsider Order No. 2 (“Motion”).

C & H is challenging the Arkansas Department of Environmental Quality’s (“ADEQ”) denial of an application for a Regulation No. 5 permit. The C & H facility involves the operation of a swine facility in Newton County, Arkansas. Regulation No. 5 addresses liquid animal waste management systems.

The company and ADEQ are also involved in judicial litigation of a previously denied permit for which the facility holds and/or has applied.

ALJ Moulton’s Order No. 2 notes in part, in denying C & H’s Motion:

The underlying problem with C & H’s motion is that Ark. Code Ann. § 8-4-205(c)(1)(A) legally mandates that the Commission’s ALJ hold a preliminary hearing within thirty (30) days of a permit appeal being filed. So unless, or until, the Newton County Circuit Court specifically instructs the Commission or the ALJ not to comply Ark. Code Ann. § 8-4-205(c)(1)(A) and not hold a preliminary hearing, which to date the Newton County Circuit Court has not done, the Commission must hold a preliminary hearing on C & H’s Request for Commission review or otherwise be in violation of Ark. Code Ann. § 8-4-205(c)(1)(A). If C & H, or any other party, believes there is cause to continue a procedural schedule to hear the merits of C & H’s permit appeal that motion can be filed, or alternatively can be addressed during the January 4, 2019, preliminary hearing.

Because Ark. Code Ann. § 8-4-205(c)(1)(A) mandates the Commission’s ALJ hold a preliminary hearing within thirty (30) days after a Request for Commission Review of a permitting decision is filed, C & H’s Motion to Continue the preliminary hearing is denied.

C & H’s Motion requesting reconsideration states in part:

The preliminary hearing is scheduled for January 4, 2018 and C & H filed its motion before the date scheduled for the preliminary hearing, stating and documenting the good cause that exists for continuance. While the motion was not filed ten (10) days before the date scheduled for the preliminary

hearing, Order No. 1 suggested, but did not mandate, that schedule. The undersigned was out of town for the Christmas holidays, and was unable to file the motion until his return on December 28, 2018. Furthermore, the ALJ has continued a Preliminary Hearing in other matters when circumstances justify such an action. For example, in *In the Matter of Delta Natural Kraft, LLC*, APC&EC Docket No. 11-012-P, the ALJ initiated the Preliminary Hearing on October 11, 2011, but continued the Preliminary Hearing until July 11, 2012 (ten months) through Order No. 7, which stated that “the hearing officer will not issue another scheduling order.”

C & H has also filed today an expedited motion for an order expressly expanding the Newton County Circuit Court’s stay order to Docket No. 18-001-P. This Motion for Reconsideration is filed subject to the circuit court motion, but the circuit court motion constitutes further cause for the relief requested herein.

A copy of Order No. 2 can be found [here](#) and the Motion [here](#).