

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF C&H HOG)
FARM, INC)

DOCKET NO. 18-004-P
ORDER NO. 2

ORDER

On December 13, 2018, C&H Hog Farms Inc., ("C&H") filed a Request for Adjudicatory Hearing and Commission Review, along with a Motion for Stay, with the Arkansas Pollution Control and Ecology Commission ("Commission"). C&H seeks Commission review of a decision by the Director of the Arkansas Department of Environmental Quality (ADEQ) denying C&H a Regulation No. 5 permit.

On December 19, 2018, the Commission's administrative law judge (ALJ) set a preliminary hearing in the docket for January 4, 2019, and on December 27, 2018, C&H filed a Motion to Continue the January 4, 2019, preliminary hearing. In short, C&H objects to the Commission, or the Commission's ALJ, from taking any action on C&H's Request for Commission Review, including holding a preliminary hearing, until the Newton County Circuit Court makes a decision on the merits of C&H's appeal of the Commission's decision in Docket No. 18-001-P, *In the Matter of C&H Hog Farms, Inc.*

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.

IT IS SO ORDERED

This 31st day of December 2018



Charles Moulton
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Patricia Goff, Commission Secretary, hereby certify that a copy of the foregoing Order No. 2, In the Matter of C&H Hog Farm, Inc.; Docket No. 18-004-P, has been mailed by certified mail or by first class mail, postage prepaid, to the following parties of record, this 31st day of December 2018.

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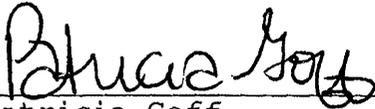
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