

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**SUBJECT – In The Matter of C&H Hog  
Farms, Inc.**

**MINUTE ORDER NO. 19-05**

**Docket No. 18-004-P  
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On December 13, 2018, C&H Hog Farms Inc. (C&H) filed a Motion for Stay with the Arkansas Pollution Control and Ecology Commission (“Commission”) pursuant to Reg.8.612 in conjunction with its appeal of ADEQ’s denial of Permit No. 4264-W. C&H seeks a stay from the Commission to allow it to continue to operate under expired Arkansas State NPDES Permit Number ARG590001. C&H’s motion for stay in this docket is similar to the stay the Commission granted C&H in Minute Order No. 18-01.

Regulation 8.612 allows the Commission to provide for a stay, modify the terms of a stay, or terminate a stay during the pendency of a Commission review and under appropriate circumstances to avoid substantial prejudice to a party. C&H has been operating under a Regulation No. 6 permit –Permit No. ARG590001 – since January 2018 and during ADEQ’s most recent public comment period of C&H’s Regulation No. 5 permit application.

On October, 17, 2018, the Newton County Circuit Court issued an order in Case No. 51CV-18-58 which allows C&H to continue with its operations. On January 18, 2019, the Newton County Circuit Court issued another order in Case No. 51CV-18-58 in which Judge Putnam held that “[a]t the present time, this court and no other agency or tribunal has jurisdiction over the Plaintiff’s application for a Regulation No. 5 permit.” The Arkansas Supreme Court and the Court of Appeals has long held that an appellate review of an administrative agency decision is limited in scope and agency decisions should be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion. *Williams v. Arkansas State Board of Physical Therapy*, 353 Ark. 778, 120 S.W. 3d 581 (2003). The only matter on appeal before the Newton County Circuit Court in Case No. 51CV-18-58 is the Commission’s minute order 18-20 and the only issue is whether the Commission erred as a matter of law in its remand of C&H’s Regulation No. 5 permit application to ADEQ. The Commission finds that allowing 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. Allowing C&H to pursue its appeal before the Commission would ultimately result in a decision on the merits – an outcome that would benefit the public, ADEQ, and most importantly C&H. Nevertheless, because the Newton County Circuit Court has already provided C&H a stay to continue to operate, and because the Newton County Circuit Court has made it clear in more than one order it has entered in Case No. 51CV-18-58 that it believes it has overarching jurisdiction over this matter, in order to prevent any confusion or conflict between the Commission and the Newton County Circuit Court the Commission dismisses C&H’s appeal in this docket.

This docket is closed.

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SUBJECT – In The Matter of C&H Hog  
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MINUTE ORDER NO. 19-15

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COMMISSIONERS

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[Signature] B. Holland  
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RR  
R. Reynolds – Chair

SUBMITTED BY: Charles Moulton DATE PASSED: 01/25/19