

**IN THE COURT OF APPEALS
OF THE STATE OF ARKANSAS**

CAROL BITTING, et al

APPELLANTS

VS.

No. CV-18-427

**ARKANSAS POLLUTION CONTROL
& ECOLOGY COMMISSION AND
ELLIS CAMPBELL d/b/a EC FARMS**

APPELLEES

**APPELLANTS' RESPONSE TO MOTION TO DISMISS
OF ELLIS CAMPBELL D/B/A EC FARMS**

Come the Appellants, Carol Bitting and Lin Welford, and for their Response to the Motion to Dismiss Appeal of the Appellee, Ellis Campbell d/b/a EC Farms, state:

1. Appellants admit that the Newton County Circuit Court entered its Order on the appeal of the permit decision of the Arkansas Pollution Control & Ecology Commission on January 10, 2018, as alleged in Paragraph No. 1 of the Motion to Dismiss.

2. Appellants admit that the Arkansas Pollution Control & Ecology Commission filed a Motion for Reconsideration of the Order on January 25, 2018, and that the Circuit Court did not rule on that Motion.

3. Appellants admit that on February 12, 2018, Appellants filed their Notice of Appeal to this Court as alleged in Paragraph No. 3 of the Motion to Dismiss.

4. Appellants admit that Rule 4 of the Arkansas Rules of Appellate Procedure –

Civil requires that a notice of appeal be filed within thirty days of the entry of the order from which the appeal is taken; that the thirty-day period begins to run from the date after the order is entered; and that the first day of the thirty-day period to file the notice of appeal in this case was January 11, 2018. Appellants deny that the thirtieth day of the period and deadline for filing the notice of appeal in this case was Friday, February 9, 2018.

5. Appellants state that the allegations contained in Paragraph 5 of EC Farms' Motion to Dismiss contain EC Farms' projected results of a hypothetical issue, and are not relevant. To the extent that a response to such allegations is required, Appellants deny such allegations.

6. **FURTHER ANSWERING**, Appellants state that, while Rule 4(a) of the Rules of Appellate Procedure – Civil states that “a notice of appeal shall be filed within thirty (30) days from the date of the judgment, decree or order appealed from,” the computation of that thirty-day time period is also subject to the provisions of Rule 9 of the Arkansas Rules of Appellate Procedure – Civil, and Rule 1-4 of the Arkansas Supreme Court and Court of Appeals Rules.

7. Rule 9 of the Arkansas Rules of Appellate Procedure – Civil provides that “Whenever the last day for taking any action under these rules or under the Rules of the Supreme Court and Court of Appeals falls on a Saturday, Sunday, legal

holiday or other day when the clerk's office is closed, the time for such action shall be extended to the next business day.”

8. Rule 1-4 of the Arkansas Supreme Court and Court of Appeals

Rules (Clerk's Office Business Hours) provides in relevant part that “Filings shall occur only between business hours of 8:00 a.m. and 5:00 p.m. on business days.”

“Business days” do not include Saturdays and Sundays. Rule 9, *supra*; *Watanabe v. Webb*, 320 Ark. 375 896 S.W.2d 597 (1995).

9. In its Motion and Brief, Appellee EC Farms erroneously stated that the 30th and final day for filing the Notice of Appeal in this case was Friday, February 9. In fact, the 30th day following the entry of the Order appealed from (January 11, 2018) was Saturday, February 10, a date that is not a “business day” within the meaning of Rule 1-4, and a date on which the Clerk's office is not open. Pursuant to Rule 9 of the Arkansas Rules of Appellate Procedure – Civil in such event, the period for filing runs until the end of the next day that the Clerk's office is open, which was Monday, February 12, the date on which the Notice of Appeal was filed with the Clerk.

10. A Brief in Support of this Response is filed contemporaneously herewith.

WHEREFORE, Appellants pray that the Motion to Dismiss of the Appellee, Ellis Campbell d/b/a EC Farms, be denied; and that Appellants be awarded all other legal, equitable and proper relief to which they may be entitled.

Respectfully submitted,

WILLIAMS & ANDERSON PLC

By: /s/ Richard H. Mays

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CERTIFICATE OF SERVICE

I, Richard H. Mays, hereby certify that a true and correct copy of the foregoing Motion was sent via electronic mail and United States mail, postage prepaid, this 10th day of July, 2018, to the following:

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Richard H. Mays

Case Name: Carol Bitting et al v. Arkansas Department of Environmental Quality et al.

Docket No: Case No. CV-18-427

Title of Document: Motion to Supplement the Record and Revise Briefing Schedule

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies:

I have submitted and served on opposing counsel an unredacted PDF document that complies with the Rules of the Supreme Court and Court of Appeals of the State of Arkansas. The PDF document is identical to the corresponding parts of the paper document from which they were created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document is free of computer viruses. A copy of this certificate has been filed with the Court and has been served on all opposing parties.

Identification of paper documents not in PDF format: None.

/s/ Richard H. Mays

Dated July 10, 2018.

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