

**BEFORE THE ARKANSAS COMMISSION ON
POLLUTION CONTROL AND ECOLOGY**

IN THE MATTER OF:

C & H Hog Farms

DOCKET NO. 18-_____
NPDES Permit No. Permit No. 5264-W

MOTION FOR STAY

C&H Hog Farms, Inc. (“C&H”) respectfully moves the Arkansas Commission on Pollution Control & Ecology (the “Commission”) for a stay of the decision of the Director of the Arkansas Department of Environmental Quality (“ADEQ”) dated November 19, 2018 to deny Permit No. 5264-W (the “Reg. 5 Permit”), with related implications for Arkansas State NPDES Permit Number ARG590001 (the “Reg. 6 Permit”) (the “Decision”). C&H is filing, concurrently herewith, a Request for Adjudicatory Hearing and Commission Review and Stay (“Appeal”), and the allegations stated in the Appeal are incorporated herein.

C&H seeks a stay because, to the extent that ADEQ had jurisdiction and authority to make the Decision, the Decision states that

“Continued coverage under the expired general permit ARG590000 ends upon notice of this final permit decision. Operations at the facility must cease within thirty (30) days notice of this final permitting decision. Pursuant to Section 1.9 of ARG590000, and Permit Tracking Number ARG590001, C&H Hog Farms must submit a closure plan to ADEQ for review and approval within sixty (60) days of the final day of operation. Upon approval of the closure plan and schedule by ADEQ, C&H Hog Farms must perform closure activities in accordance with the approved plan. C&H Hog Farms must submit certification that the facility was closed in accordance with the approved plan within ten (10) days of completion of the closure activities.”

If coverage under the Reg. 6 permit ends, and/or if C&H is required to cease operations, C&H will be substantially prejudiced, as more specifically identified in the testimony of Jason Henson to the Newton County Circuit Court which led to Newton County Circuit Judge Putman

entering a stay. A copy of the transcript of Mr. Henson's sworn testimony is attached as Exhibit A, and the judicial Interim Order and Stay is attached as Exhibit B. "Substantial prejudice" has been interpreted by the Commission to include prejudice resulting from economic and time pressures. *See In the Matter of Garland County Landfill*, Docket No. 01-005-P (April 27, 2001).

C&H requests that, pursuant to APC&EC Regulation No. 8.612(C)(2), its motion be considered promptly by the Commission at its next regularly scheduled meeting of the Commission, currently scheduled for January 25, 2018. C&H further requests that pursuant to Reg. 8.612(C), the Chairman of the Commission issue a stay that will continue until the next regularly scheduled Commission meeting.

Regulation No. 8, Section Reg. No. 8.612(C) provides the procedures for seeking a stay: A request [for stay] must be in writing and filed with the Commission Secretary. The Administrative Hearing Officer or the Commission Secretary shall promptly inform the Chairman of the filing of a request [for stay]. The Chairman shall, in his discretion, either (1) grant a temporary stay, modify a stay, or terminate a stay, and such action shall be effective until the next regularly scheduled Commission meeting; or (2) direct the Secretary to place the request on the agenda for the next regularly scheduled Commission meeting; or (3) call a special Commission meeting for the purpose of considering the request. The Commission's decision on the request shall be in the form of a Minute Order and shall state which specific terms or condition(s) are affected by the decision. The Commission Secretary shall promptly mail the decision to all parties of record identified in Reg. 8.601.

A proposed interim stay for consideration by the Chairman is attached as Exhibit C.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon the following by U.S. Mail, postage prepaid, this 132th day of December, 2018:

Becky Keogh, Director

via

Michael McAlister

Attorney Supervisor

ARKANSAS DEPARTMENT OF

ENVIRONMENTAL QUALITY

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