

**BEFORE THE
ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION**

IN THE MATTER OF C & H HOG FARMS, INC.

AFIN 51- 00164; Permit No. 5264-W

MOTION FOR STAY OF PERMITTING DECISION

Comes the petitioner and permit applicant, C & H Hog Farms, Inc. ("C & H"), pursuant to Reg. 8.612, and for its motion for stay of permitting decision, states:

1. On January 10, 2018, the Arkansas Department of Environmental Quality issued its final permitting decision on Permit No. 5264-W. *See Exhibit A hereto.* The Statement of Basis for the denial of the application does not specify the information that ADEQ was not provided, and C &H is requesting the specific information from ADEQ. C & H notes that it has provided all information requested by ADEQ and that all information available to C & H has either been provided to ADEQ in connection with the current application or in connection with the administrative record on its Reg. 6 permit. C & H will file a timely request for hearing on the permitting decision pursuant to Reg. 8.603 and other applicable regulations once it has received information regarding the specific information allegedly not provided to ADEQ.

2. C & H has operated under its Reg. 6 permit pending a decision on its current permit application. C & H has had no violations of ADEQ's regulations since its Reg. 6 permit was granted or during the pendency of the application and will continue to operate in compliance with applicable environmental laws and regulations pending the administrative review hearing and any other necessary appeals.

3. There is no risk of harm to the public if a stay of the permitting decision is granted. A stay is fair, equitable, and necessary to protect the business interests of C & H and its owners, who have pledged substantial personal assets, including their homes, to finance the operations of C & H. C & H and its owners will be irreparably harmed if a stay is not granted.

4. C & H is likely to succeed on the merits of its request for hearing and administrative review. The farm and its waste ponds were constructed in compliance with ADEQ regulations when the Reg. 6 permit was granted, and there is no change to the ponds, the farm, or C & H's waste management to justify the denial of the present application. C & H has complied with all requests by ADEQ for information, and there is no valid ground to deny C & H's permit

application on either the merits of the application or on procedural grounds. Further, ADEQ is estopped to deny the application on the ground that C & H did not provide necessary information. *Foote's Dixie Dandy, Inc. v. McHenry*, 270 Ark. 816, 607 S.W.2d 323 (1980). See *Exhibit B hereto*. C & H relied on ADEQ's statements as to the completeness of its application.

WHEREFORE, C & H Hog Farms, Inc. moves the Arkansas Pollution Control & Ecology Commission to stay the permitting decision of ADEQ until the exhaustion of all appeals available to C & H and for all other proper relief to which it may be entitled.



WILLIAM A. WADDELL, JR.
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waddell@fridayfirm.com

Attorney for C & H Hog Farms, Inc.

CERTIFICATE OF SERVICE

I certify that the foregoing is being transmitted electronically on this 11th day of January, 2018, to:

Richard Mays
115 South Third Street, Suite A-2
Heber Springs, AR 72543
rhmay@richardmayslawfirm.com

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
mcalister@adeq.state.ar.us



WILLIAM A. WADDELL, JR.



NOTICE OF FINAL PERMITTING DECISION

Date of Issuance: January 10, 2018

AFIN 51-00164; Permit No. 5264-W

C&H Hog Farms, Inc.
HC 72 Box 2
Vendor, AR 72683

The Director has issued a final permitting decision for the above referenced permit. The Director's decision was made upon consideration of the completed application, the public comments on the record, and other materials provided by law or regulation applicable to the application.

Effective January 10, 2018, the Arkansas Department of Environmental Quality (ADEQ) has denied the application for a permit issued pursuant to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 5 for Permit Number 5264-W and AFIN 51-00164. A Statement of Basis for the decision and ADEQ's Response to Comments is available on ADEQ's website at: <https://www.adeq.state.ar.us/ts7t9hs3>. To request a copy of the documents, please call 501-682-0979.

The applicant and any person who submitted public comments on the record may request an adjudicatory hearing and Commission review of the final permitting decision as provided by APC&EC Regulation 8, Chapter 6.

STATEMENT OF BASIS

This Statement of Basis is for information and justification of the final permitting decision only.

The Arkansas Department of Environmental Quality (ADEQ) hereby issues a denial of the application for Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 5 Permit, 5264-W, AFIN 51-00164.

1. **Permitting Authority**

Arkansas Department of Environmental Quality
Office of Water Quality
5301 Northshore Dr.
North Little Rock, AR 72118-5317

2. **Applicant**

C&H Hog Farms, Inc.
HC 72 Box 2
Vendor, AR 72683

3. **Permit History/Activity**

The facility was previously permitted under APC&EC Regulation 6. The applicant submitted a permit application for a new permit under Regulation 5, which was received on April 7, 2016, with additional information received on June 29, 2016, December 6, 2017, December 26, 2017, and December 29, 2017.

4. **Facility Location**

The facility is located as follows: HC 72 box 2 near the community of Mount Judea in Newton County, Arkansas. The facility is located at the following coordinates:

Latitude 35, 55, 30.47 N; Longitude 93.4.18.42 W

5. **Waterbody Evaluation**

The facility is located in Stream Segment 4J of the White River basin, which is not in the Nutrient Surplus Area as designated by Ark. Code Ann. § 15-20-1104. Surrounding areas were evaluated to determine if any Extraordinary Resource Waters (ERWs), Ecologically Sensitive Waters (ESWs), Natural or Scenic Waterways (NSWs), or waterbodies in the 2016 ADEQ 303 (d) list of impaired waterbodies in the State of Arkansas are near the proposed land application sites.

6. **Applicant Activity**

Under the standard industrial classification (SIC) code 0213 or North American Industry Classification System (NAICS) code 112210, the applicant's activities are the operation of a swine facility.

7. **Facility Type and Size**

This existing facility operates as a sow-farrowing facility. The permit application proposed to house 6 boars, 2,252 gestating sows, 420 lactating sows, and 750 nursery pigs.

8. **Basis for Permit Decision**

APC&EC Reg. 8.211 (A) (1) states:

The Director shall issue the final permitting decision in writing. The Director's decision shall be made upon consideration of the completed application, the public comments on the record, if any, and any other materials provided by law or regulation applicable to the application or other matters to be considered in the decision. The Director may impose special conditions upon issuance of a permit.

In addition, APC&EC Regulation 5 entitled "Liquid Animal Waste Management Systems" specifically "Chapter 4: Technical Requirements, Reg. Section 5.402, Design Requirements" states:

(A) Design and waste management plans shall be in accordance with this Chapter and the following United States Department of Agriculture Natural Resources Conservation technical publications:

- (1) Field Office Technical Guide, as amended.
- (2) Agricultural Waste Management Field Handbook, as amended.

The permitting decision is based on the permit application record. The record consists of information and data submitted by the applicant and comments received from the public. ADEQ denies issuance of the permit after determining that the record lacks necessary and critical information to support granting of the permit.

The record fails to include the requisite geological, geotechnical, groundwater, soils, structural, and testing information specified in Reg. 5.402. Without the detailed geophysical and engineering data required by the Agricultural Waste Management Field Handbook, as amended, ADEQ is unable to ascertain compliance with Reg. 5.402.

9. Point of Contact

The preparation and technical review of this permit application were conducted by Office of Water Quality staff with support from other resources within ADEQ including the Office of Law and Policy. The review team was led by Dr. Robert Blanz, Ph.D., P.E., Chief Technical Officer for ADEQ.

10. Sources

1. APC&EC Regulation No. 8, Administrative Procedures, as amended.
2. APC&EC Regulation No. 9, fee System for Environmental Permits, as amended.
3. APC&EC Regulation No. 5, Liquid Animal Waste Management Systems, as amended.
4. Water and Air Pollution Control Act, Ark Code Ann 8-4-101 et seq.
5. Application for permit No. 5264-W received April 7, 2016,
6. NMP dated April 6, 2016.
7. Additional information received on June 29, 2016
8. Additional information received on December 6, 2017
9. Additional information received on December 26, 2017
10. Additional information received on December 29, 2017
11. Drilling Study report by Harbor Environmental and Safety, Inc. dated December 2016, as amended

From: William A. Waddell, Jr.
Sent: Friday, December 29, 2017 11:07 AM
To: 'McAlister, Michael'
Cc: chhogfarmsinc@outlook.com
Subject: RE: Updated P Index

Thank you.

From: McAlister, Michael [<mailto:MCALISTER@adeq.state.ar.us>]
Sent: Friday, December 29, 2017 11:02 AM
To: William A. Waddell, Jr.
Cc: chhogfarmsinc@outlook.com
Subject: RE: Updated P Index

Bill,

I can confirm receipt of the updated P Index chart that we discussed yesterday and referenced in this morning's email. It appears that your client has responded to the issues identified in the 12/27 letter that were based on technical staff's initial review of the submissions.

Thank you and Mr. Henson for your continued cooperation.

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
501-682-0918
mcalister@adeq.state.ar.us

From: William A. Waddell, Jr. [<mailto:Waddell@fridayfirm.com>]
Sent: Friday, December 29, 2017 10:21 AM
To: McAlister, Michael
Cc: chhogfarmsinc@outlook.com
Subject: FW: Updated P Index

Mike,

Please confirm that this is the document that was requested yesterday as confirmed in your e-mail of this morning. Also, please confirm that this completes the requests identified in your letter of December 27. It has been C & H's intent to fully comply with the requests, but if ADEQ believes something has not been provided as requested, then it would like to have the opportunity to submit the information before noon today.

Thank you for your courtesy.

Exhibit B

Bill

WILLIAM A. WADDELL, JR. | ATTORNEY



Waddell@fridayfirm.com | Direct: (501) 370-1510 | Fax (501) 244-5342
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201-3522 | www.FridayFirm.com

From: C H Hog Farms Inc [<mailto:chhogfarmsinc@outlook.com>]
Sent: Friday, December 29, 2017 10:10 AM
To: Water-permit-application@adeq.state.ar.us
Cc: William A. Waddell, Jr.
Subject: Updated P Index

Attached is the updated P Index which should be replaced in the most recent NMP submitted.

Thank you,
Jason Henson

From: McAlister, Michael
Sent: Friday, December 29, 2017 8:58 AM
To: 'William A. Waddell, Jr.'; Water Permit Application
Cc: chhogfarmsinc@outlook.com
Subject: RE: Another Document
Importance: High

Mr. Waddell,
Your statement below is not entirely correct.

You and I spoke yesterday afternoon about two issues: 1) technical documents about pond design and construction, and 2) an apparent error regarding the updated NMP that was submitted yesterday.

After we spoke, you responded by email that Mr. Henson would be attempting to contact Jamal regarding these issues, but when he was unable to reach Jamal, Mr. Henson called me. We discussed the technical documents regarding the pond construction, and it is my understanding that technical staff received that information yesterday afternoon. Mr. Henson and I did not discuss the problem with the NMP, and to my knowledge we have not received any corrected information.

My understanding is that Jamal is out of the office today, and will be unavailable. I am told that the problem is that when the NMP was updated to reflect the additional buffers as described in Mr. Henson's cover letter yesterday, those updated buffers were made to a previous version and not the most current version of the NMP, and as a result the acreage table in the NMP as submitted yesterday is

incorrect. Please have your client and his consultants correct this error and submit a correct updated NMP with the additional buffers and an accurate acreage table.

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
501-682-0918
mcalister@adeq.state.ar.us

From: William A. Waddell, Jr.
Sent: Thursday, December 28, 2017 4:27 PM
To: Water-permit-application@adeq.state.ar.us; 'McAlister, Michael'
Cc: chhogfarmsinc@outlook.com
Subject: RE: Another Document

Jason sent the e-mail and document referenced below after speaking with Michael McAlister and understands that nothing else is needed or requested. Is that correct?

From: C H Hog Farms Inc [<mailto:chhogfarmsinc@outlook.com>]
Sent: Thursday, December 28, 2017 4:01 PM
To: Water-permit-application@adeq.state.ar.us
Cc: William A. Waddell, Jr.
Subject: Another Document

Here's another document you might need.

Thanks,
Jason Henson
C & H Hog Farms, Inc.

From: William A. Waddell, Jr.
Sent: Thursday, December 28, 2017 3:50 PM
To: 'McAlister, Michael'
Cc: chhogfarmsinc@outlook.com
Subject: RE: C & H response to letter dated 12-27-17

Thank you for your call. Per the call, I relayed these two items to Jason: (1) The technical team believes there is a document regarding the design and construction of the ponds (including the clay liners) that was a part of the Reg. 6 application that has not been submitted yet with the Reg. 5 application; and (2) It appears to your technical team that the updated acreage is on a form that is on an older form that is not the most recent form.

Jason is calling Jamal to ask him more questions, because he could not understand from my limited description what is being requested. As I mentioned when we spoke, if the technical team could identify

the specific document from the Reg. 6 application, Jason said he would produce it promptly, but he is not aware of which document they are requesting. Can they be more specific?

On the second item, Jason is looking at this and will ask Jamal for specific information as to what is needed. Please alert Jamal to the reason for Jason's call. I believe the communication needs to be between Jason and the technical folks to avoid any miscommunication.

From: William A. Waddell, Jr.
Sent: Thursday, December 28, 2017 2:55 PM
To: 'McAlister, Michael'
Cc: chhogfarmsinc@outlook.com
Subject: RE: C & H response to letter dated 12-27-17

Thank you. **We assume that C & H has complied with all requests and that the application is administratively and technically complete unless ADEQ notifies C & H otherwise.** Given the deadline of noon tomorrow, if ADEQ believes anything else is needed or that C & H has not provided everything requested, we would appreciate you notifying us immediately.

From: McAlister, Michael [<mailto:MCALISTER@adeq.state.ar.us>]
Sent: Thursday, December 28, 2017 2:22 PM
To: William A. Waddell, Jr.
Subject: RE: C & H response to letter dated 12-27-17

Mr. Waddell,
ADEQ confirms receipt of your email and the 11 additional emails referenced therein.
Thank you,

Michael McAlister
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
501-682-0918
mcAlister@adeq.state.ar.us

From: William A. Waddell, Jr. [<mailto:Waddell@fridayfirm.com>]
Sent: Thursday, December 28, 2017 1:05 PM
To: McAlister, Michael
Subject: FW: C & H response to letter dated 12-27-17

At your convenience, please confirm that ADEQ received the 11 additional e-mails that followed the e-mail below. If you or ADEQ believe anything is missing, please let us know.

From: C H Hog Farms Inc [<mailto:chhogfarmsinc@outlook.com>]

Sent: Thursday, December 28, 2017 11:59 AM

To: Water-permit-application@adeq.state.ar.us

Cc: William A. Waddell, Jr.

Subject: C & H response to letter dated 12-27-17

Please see attached:

Due to the size of attachments, 11 separate emails will be sent relevant to this response. Included in this email is the cover letter. If the Department does not receive all of the documents addressed in the cover letter, please notify us immediately.