

**IN THE CIRCUIT COURT OF NEWTON COUNTY, ARKANSAS  
CIVIL DIVISION**

CAROL BITTING, LIN WELLFORD  
and NANCY HALLER, M.D.

APPELLANTS

v.

Case No. 2017-10-3

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

APPELLEES

**THE ARKANSAS POLLUTION CONTROL AND  
ECOLOGY COMMISSION'S RESPONSE TO NOTICE OF APPEAL**

COMES NOW, the Arkansas Pollution Control and Ecology Commission, ("Commission") by and through its counsel, Leslie Rutledge, Attorney General, and the undersigned Assistant Attorneys General, and for its Response to Appellants' Notice of Appeal states as follows:

1. The Commission admits that Minute Order No. 17-07 was passed by the Commission on January 27, 2017, and that Minute Order No. 17-07 adopted and affirmed, without modification, Order No. 9 (Recommended Decision) of the Commission's Administrative Law Judge, Charles Moulton.

2. The Commission denies the allegations contained in paragraph one (1) of Appellants' Notice of Appeal.

3. The Commission denies the allegations contained in paragraph two (2) of Appellants' Notice of Appeal.

FILED  
OFFICE OF THE CIRCUIT CLERK  
NEWTON COUNTY ARKANSAS

MAR 23 2017

A.M. 1:05 P.M.

## AFFIRMATIVE DEFENSES

1. The Commission affirmatively states that judicial review of an administrative decision of the Arkansas Pollution Control and Ecology Commission is governed by the provisions of Ark. Code Ann. §§ 8-4-222 – 8-4-229.

2. The Commission affirmatively states that administrative proceedings held before the Commission are governed by the Commission's Regulation No. 8, that the Commission's decision on appeal in this case is supported by substantial evidence as required by Ark. Code Ann. § 8-4-227, and that Appellants have failed to allege that the Commission's decision in this case was:

1. In violation of constitutional or statutory provisions;
2. In excess of the agency's statutory authority;
3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Not supported by substantial evidence or record; or
6. Arbitrary, capricious, or characterized by abuse of discretion.

as required by Ark. Code Ann. §§ 8-4-227(d), and 8-7-213.

3. The Commission denies each and every allegation of this Appeal not specifically admitted herein, and reserves the right to file any additional defenses.

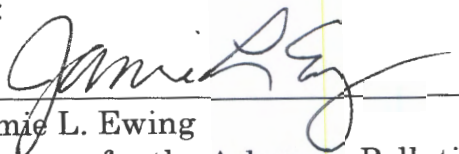
The Commission simultaneously files this response and the record upon which Minute Order No. 17-07 was based, in accordance with Ark. Code Ann. §§ 8-4-226(a)(1) & (a)(3). The Commission's transmittal letter and Table of Contents for the record are included herein as Exhibit A.

**WHEREFORE**, the Arkansas Pollution Control and Ecology Commission respectfully requests this Court deny the relief sought by Appellants' Notice of Appeal, for costs herein expended, and for any and all other proper relief.

Respectfully Submitted,

LESLIE RUTLEDGE  
Attorney General  
323 Center Street, Suite 200  
Little Rock, AR 72201-2610  
(501) 682-2007

BY:

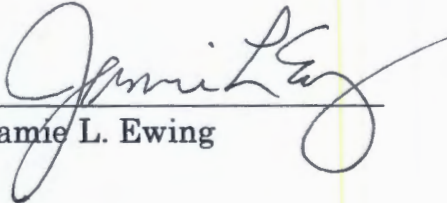
  
\_\_\_\_\_  
Jamie L. Ewing  
Attorney for the Arkansas Pollution  
Control & Ecology Commission  
323 Center Street, Suite 200  
Little Rock, AR 72201  
(501) 682-5310

**CERTIFICATE OF SERVICE**

I, Jamie L. Ewing, Assistant Attorney General, do hereby certify that I have served the foregoing document by mailing a copy of same by U.S. Mail, postage prepaid this on this 23rd day of March, 2017, to:

Mr. Richard H. Mays  
P.O. Box 1450  
Heber Springs, AR 72543

Mr. William A. Waddell  
Friday, Eldredge & Clark, LLP  
400 West Capitol Avenue, Suite 2000  
Little Rock, AR 72201

  
\_\_\_\_\_  
Jamie L. Ewing



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL  
SUITE 205  
LITTLE ROCK, ARKANSAS 72201  
PHONE: (501) 682-7890  
FAX: (501) 682-7891

March 23, 2017

Mr. Donnie Davis  
Circuit Clerk of Newton County  
Newton County Court House  
100 E. Court Street  
Jasper, AR 72641-0410

RE: CAROL BITTING, LIN WELLFORD  
and NANCY HALLER, M.D.

APPELLANT

V. CASE NO. CV 2017-10-3

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

APPELLEE

Dear Mr. Davis:

Enclosed please find the original of the Administrative Record and the Arkansas Pollution Control and Ecology Commission's Answer to Appellant's Notice of Appeal. I am also enclosing a Table of Contents listing the documents in the record of this consolidated docket.

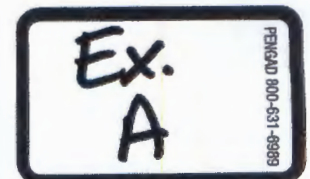
A copy of this letter, Answer to Notice of Appeal, and Table of Contents is being sent to counsel for all parties.

Thank you for your courtesy and cooperation in this request. If you have any questions, please do not hesitate to contact me.

Sincerely,

Patricia Goff  
Commission Secretary

Enclosure



LETTER TO DONNIE DAVIS  
MARCH 30, 2017  
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cc: Richard H. Mays  
William A. Waddell  
Tracy R. Rothermel, Esq.  
Basil V. Hicks III, Esq.

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