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C&H Hog Farms, Inc. (Newton County, Arkansas): Intervenors' Scope of Participation in Arkansas Pollution Control and Ecology Commission Proceedings Addressed

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As noted in a previous blog post ([see previous post here](#)) the Ozark Society, Inc., and three individuals (“Intervenors”) filed a Motion to Intervene and Request for Hearing (“Motion”) in C&H Hog Farms, Inc., (“C&H”) Request for Adjudicatory Hearing and Commission Review (“Request”).

C&H is challenging the Arkansas Department of Environmental Quality (“ADEQ”) denial of an application for a Regulation 5 permit ([see previous post here](#)).

Administrative Law Judge (“ALJ”) Charles Moulton previously granted the Intervenors’ Motion. However, he further noted:

... at the time of the February 9, 2018, preliminary hearing Ozark Intervenors and BRWA-Intervenors did not have the opportunity to file a Reply to C&H’s Response to the Motion to Intervene. Therefore, the ALJ reserves the issue on the limits of the Intervenors’ participation in this docket until the issue has been fully briefed.

Ozark Intervenors and BRWA-ACC subsequently filed on February 20th Reply to C&H’s Response to the Motion to Intervene. As a result, ALJ Moulton in a February 21st Order No. 8 (“Order”) stated that “the issue of Intervenors’ level of participation in this case is now ripe for a decision.”

The ALJ concludes in Order No. 8 that Arkansas Pollution Control and Ecology Commission Reg. 8.604 does not limit an intervenor’s participation in the Request to what they had raised in the public comment. He further states:

... furthermore, if Ark. Code Ann. § 8-4-205(b)(2) and Reg. 8.613(B)(5) are applicable, the ALJ finds that Intervenors could not have discovered and presented during public comment C&H’s Regulation 6 procedural permitting claims and estoppel arguments that it has raised in its Request for Hearing. The ALJ finds that Intervenors may participate and argue all issues raised by C&H in its Amended Request for Hearing.

A copy of the [Order](#) and [Intervenors’ Reply](#) can be downloaded here.