

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

State of Missouri ex rel.)	
Missouri Department of Natural)	
Resources)	
)	
Relator,)	
v.)	Case No. _____
)	
Commissioner Brett W. Berri)	
Administrative Hearing Commission)	
)	
Respondent.)	

PETITION FOR WRIT OF PROHIBITION

COMES NOW, Relator, the Missouri Department of Natural Resources (“Department”), pursuant to Mo. R. Civ. P. 97, and petitions this Court for a preliminary order in prohibition to Respondent, Commissioner Brett W. Berri in his official capacity as a Commissioner of the Administrative Hearing Commission, barring him from enforcing the Stay Order entered on July 26, 2018 in AHC case numbers 18-0498 and 18-0501.

THE PARTIES

1. Relator is the Missouri Department of Natural Resources, which has authority to permit and regulate concentrated animal feeding operations (“CAFOs”) pursuant to the Missouri Clean Water Law. §§ 644.006 to 644.150 and 640.700 to 640.758, RSMo (2016), and regulations 10 CSR 20-6.010, 10 CSR 20-6.011, 10 CSR 20-6.015, 10 CSR 20-6.020, 10 CSR 20-6.300, and 10

CSR 20-8.300.

2. Respondent is Commissioner Brett W. Berri of the Administrative Hearing Commission (“AHC”). The AHC is vested with jurisdiction over statutorily specified environmental matters, including to hear administrative appeals of actions taken by the Department and to issue recommended decisions to the Clean Water Commission. § 621.250.1, RSMo. The authority to render final decisions remains with the Clean Water Commission. § 621.250.1, RSMo.

JURISDICTION AND VENUE

3. This Court has authority to hear this matter and issue preliminary and peremptory remedial writs pursuant to Article V, § 18 of the Missouri Constitution and Section 536.150, RSMo.

4. Both Relator’s and Respondent’s principal places of business are located in Cole County, Missouri. The underlying proceedings are occurring in Cole County, Missouri.

STATEMENT OF FACTS

5. On June 15, 2018, the Department issued Permit MOG010872 (“Permit”) to Country Club Homes, LLC for the operation of the Valley Oaks Steak Company, LLC CAFO (“Valley Oaks CAFO”). See Permit attached hereto as Exhibit A.

6. In reliance on the Permit, the operator began increasing the

number of cattle on site above the 999-unit maximum amount for an unpermitted facility but within the amount specified by the Permit.

7. On June 25, 2018, Lone Jack Neighbors for Responsible Agriculture, LLC (“Lone Jack Neighbors”) filed a complaint with the AHC appealing the Department’s decision to issue the Permit, and moved for a stay. The AHC assigned case number 18-0498. An Amended Complaint and Motion for Stay was filed on June 26, 2018. See Lone Jack Neighbors’ Amended Complaint attached hereto as Exhibit B; see also Lone Jack Neighbors’ Motion to Stay, attached hereto as Exhibit C.

8. On June 27, 2018, Powell Gardens, Inc., Elizabeth Deich, and the Robert M. Chamness Trust (collectively referred to herein as “Powell Gardens”) filed a complaint with the AHC appealing the Department’s decision to issue the Permit and moved for a stay. The AHC assigned case number 18-0501. See Powell Gardens’ Complaint attached hereto as Exhibit D; see also Powell Gardens’ Motion for Stay, attached hereto as Exhibit E.

9. The AHC held a hearing on Lone Jack Neighbors’ and Powell Gardens’ Motions to Stay on July 9, 2017.

10. On July 26, 2018, Commissioner Brett W. Berri issued an order granting “a stay of the Department’s action of June 15, 2018 granting Permit No. MOG010872....” See Order attached hereto as Exhibit F.

11. The Order acknowledges the permit holder’s testimony that the

number of cattle on site at the time of the stay hearing was approximately 1,900 units, and directs that the operation be returned to its condition prior to the issuance of the Permit. See Order attached hereto as Exhibit F.

RELIEF SOUGHT

12. Issuance of the Order to stay the Permit exceeded the statutory authority of the AHC.

13. It is not clear whether the legislature's grant of authority to hear administrative appeals and issue recommended decisions pursuant to 621.250, RSMo, encompassed general administrative authority for the AHC to issue an appropriate stay of the status quo. But to the extent the AHC has such authority, that temporary authority cannot exceed the scope of authority delegated to the AHC after a final hearing. Here, the Department contends the Permit is validly issued, and the holder has acted in reliance on the Permit. The parties await a hearing before the AHC regarding the same. By virtue of the Stay Order, however, in the interim between a preliminary and final hearing the Permit holder is being directed to conduct business as though the permit does not exist to their significant detriment, and attempts to charge the Department with denying rights of a permit holder before the permit has even been presented to the Clean Water Commission for a final decision. In doing so, the Stay Order invaded the authority that the Missouri

legislature reserved to the Clean Water Commission.¹

14. “The AHC is a creature of statute and has only such ... authority as may be granted by the legislature.” *Atwell v. Fittsimmons*, 452 S.W.3d 670, 676 (Mo. App. W.D. 2014).

15. In 1978, the Missouri legislature granted the AHC authority to issue a stay of certain administrative actions. § 621.035, RSMo (1978). At this time, the AHC had no jurisdiction over Missouri Clean Water Law cases.

16. In 2005, the Missouri legislature vested the AHC with jurisdiction to hear administrative appeals and issue recommended decisions to the Clean Water Commission pursuant to the Missouri Clean Water Law, § 621.250.1, RSMo.

17. However, the Missouri legislature did not grant the AHC authority to enter final decisions in these cases. Instead, that authority remains with the Clean Water Commission. § 621.250.1, RSMo.

18. The purpose of a stay is to preserve the *status quo*. *State ex rel. Myers Mem’l Airport Comm., Inc. v. City of Carthage*, 951 S.W.2d 347, 349-50 (Mo. App. S.D. 1997).²

¹ If the Department had instead *denied* the permit, surely the AHC would not presume it could grant a permit pursuant to its authority to maintain the *status quo* through a stay.

² Indeed, the AHC’s order recites this requirement, stating “[t]he purpose of a stay of the action of an administrative agency is to preserve the *status quo*.”

19. In this case, the *status quo* is the state of affairs with an issued Permit.

20. However, the July 26, 2018, Order did not maintain the status quo. Rather, for all practical purposes, the Order revoked or voided the Department's issuance of the Permit.

21. On July 26, 2018, Valley Oaks CAFO was a permitted facility with a legal right to maintain up to 6,999 cattle on the property, subject to the terms and conditions of the Permit. The Commission's Order, rather than preserving the status quo on that date, instead attempted to revert the Valley Oaks CAFO to an unpermitted facility, which would allow only 999 cattle on the property.

22. The AHC is vested with no more statutory authority in Clean Water Law cases than to hear evidence and issue a *recommended* decision to the Clean Water Commission. It has no authority to issue or revoke permits. The Clean Water Commission, after the AHC hears evidence and makes a recommendation, then "shall issue its own decision, based on the appeal, for permit issuance, denial, or any condition of the permit." § 644.051.6 RSMo.

23. By effectively revoking or voiding the Permit, the AHC exceeded its statutory authority by going beyond its authority to merely hear evidence and recommend a decision to the Clean Water Commission.

24. Furthermore, the Order leaves the Department in a precarious

position by purporting to have the Department treat the facility as unpermitted while the Department is actively defending issuance of the Permit before a body whose jurisdiction is limited to issuance of a recommended decision to the Clean Water Commission for consideration. These competing obligations leave the Department in the position of abandoning one or the other of its regulatory responsibilities – defend its Permit or enforce environmental laws in the State of Missouri.

WHEREFORE, Relator, the Missouri Department of Natural Resources prays for the issuance of a prompt Preliminary Order in Prohibition barring Respondent from enforcing the July 26, 2018 Stay Orders in AHC case numbers 18-0498 and 18-0501 and for such other and further relief as justice may require.

Respectfully submitted,

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