

Agenda Item: 12-01

Presentation of Administrative Law Judge's Decision, Rose Acre Farms, Inc., et al., v. DENR, 10 HER 6501, Hyde Co.

Explanation:

Rose Acre Farms' egg-laying poultry facility applied for renewal of a NPDES Permit issued in 2006 for the dry litter poultry waste. The renewed permit included requirements for BMPs to reduce the deposition of ammonia emitted to the atmosphere through a ventilation system.

Rose Acre Farms contested the requirement that the facility have a NPDES Permit; the requirement for BMPs for control of atmospheric deposition of ammonia; and imposition of BMPs that had not been adopted or approved using the process required by the Tar-Pamlico River Basin NSW Management Strategy.

The Administrative Law Judge entered a Decision recommending that the EMC grant summary judgment to Rose Acre Farms on all issues presented in the contested case.

Committee Consideration:

Summary Judgment allows a court and, in administrative proceedings, the ALJ and Commission to enter a judgment or decision when it is shown that (1) there are no genuine issues of material fact in the case and (2) that a party is entitled to a decision in its favor as a matter of law.

An issue is material only if its resolution would prevent the party against whom it is resolved from prevailing in the case. The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact - or the need for the ALJ to make findings of fact.

Conversely, the opposing party has the burden of showing the existence of a genuine issue of material fact; it must come forward with specific facts to controvert the facts set forth in the moving party's forecast of the evidence.

When the material facts are shown not to be in dispute, the ALJ and NPDES Committee apply the law to the facts and grant Summary Judgment on all of the issues in the case to the party entitled by law to judgment or a decision in its favor.

The APA provides: for an ALJ decision granting Summary Judgment on all issues in a case, the Agency SHALL make a final decision. If the Agency does not adopt the ALJ's decision, it shall remand the case to the ALJ for hearing, which involves finding facts from the testimony and exhibits presented.