

November 16, 2009

A Franklin Circuit Court judge has determined that the environmental permits issued for as many as nine large Western Kentucky hog farms are illegal and need to be reworked by state regulators.

Several of the farms are already operating under terms of their permits, first issued three years ago. And Judge Phillip Shepherd's ruling on Monday does not force any to shut down.

But in his 28-page ruling, Shepherd wrote that the permits issued by the Energy and Environment Cabinet during the Fletcher administration failed to protect waterways and the public from excessive nutrients and pathogens and should have considered toxic air emissions.

Shepherd also determined that the owner of the hogs – Tennessee-based Tosh Farms – must share liability for any pollution with the Kentucky farmers raising them.

Shepherd said the agency, which he once ran, “failed to enforce its own regulatory requirements.”

Cabinet spokesman Dick Brown declined to comment, saying officials were reviewing the ruling. Carolyn Brown, an attorney who represents the Kentucky hog farmers, also declined to answer questions, as did Jimmy Tosh, owner of Tosh Farms.

“I can't comment on anything I don't know anything about,” Tosh said Monday afternoon. “I just got an email (about the ruling) a few minutes ago.”

But one of the two lawyers who represented the 12 individuals who filed the lawsuit against the environmental cabinet said he was pleased with the ruling.

“We argued these permits were illegal under Kentucky and federal law, and this judge has agreed,” said Midway attorney Hank Graddy Jr., who worked on the case with Tom FitzGerald, director of the Kentucky Resources Council. “That is helpful in my efforts to shut these facilities down.”

At issue is how waste from tens of thousands of hogs is managed.

The permits estimated that if all nine farms were operating at capacity, 45,000 hogs would produce as much as 16 million gallons of liquid waste per year. The farmers were allowed to sell the waste as fertilizer that could potentially get into waterways.

Graddy and Brown agreed that six or seven of the nine farms constructed hog barns and were now operating under agreements with Tosh.

But Monday's ruling also potentially affects as many as ten other large hog farms that were issued similar permits, Graddy said.

Shepherd said the state should have required a type of water quality permit that allows greater public participation.

He also said the permits didn't have any specific pathogen controls, despite evidence that pathogens are in hog manure. He added that the manure would emit air pollutants such as ammonia and hydrogen sulfide.

Reporter James Bruggers can be reached at (502) 582-4645.