

NOTICE OF TEMPORARY MORATORIUM ON CERTAIN PERMITS

The Arkansas Pollution Control and Ecology Commission (APC&EC), pursuant to its authority under Arkansas Code Annotated, Sec. 8-4-202, *et seq.*, has imposed a temporary moratorium on the issuance by the Arkansas Department of Environmental Quality of any new permits or coverage for medium or large confined animal operations (CAOs) and concentrated animal feeding operations (CAFOs) for swine in the Buffalo River Watershed (BRW). The action was taken at the APC&EC's regular meeting April 25, 2014.

The APC&EC minute order adopting the moratorium takes note of the historic importance of the Buffalo River, as well as its location in a region with sensitive geologic and hydrologic issues, and includes a finding that the proliferation of large and medium CAOs and CAFOs in the BRW "...will pose an unnecessary risk to the public health, safety and welfare...."

The moratorium may remain in force for up to 180 days from the date of the APC&EC's action. While the moratorium is in effect, the APC&EC's rulemaking process also will be underway for proposed revisions to APC&EC Regulations 5 and 6 to impose a permanent ban on new medium and large CAOs and CAFOs in the BRW. In a separate action at the April 25, 2014, meeting, the APC&EC voted to initiate its rulemaking process for a third-party proposal to amend Regulations 5 and 6 to establish ban on new medium and large CAOs and CAFOs in the BRW.

For the purposes of the moratorium, a medium or large CAO or CAFO is considered to be one with either 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds. The BRW is considered to be the area within the United States Geologic Service's Hydrologic Unit Code 11010005.

The moratorium does not prohibit the ADEQ from issuing permit renewals or permit modifications for medium or large CAOs and CAFOs in the BRW that have an active permit as of the date of the moratorium's adoption. Nor does the moratorium prohibit the ADEQ from issuing a new or modified permit for any medium or large CAO or CAFO in the BRW with an active permit as of the date of the moratorium's adoption as long as the approval would not increase the number of swine currently permitted in the BRW.

The moratorium will expire on October 22, 2014.

Final actions of the APC&EC may be appealed in accordance with provisions in APC&EC Regulation 8.

Copies of various documents associated with the adoption of the moratorium, the third-party rulemaking proposals to amend APC&EC Regulations 5 and 6, and the current version of APC&EC Regulation 8 can be found on the APC&EC/ADEQ website at: www.adeq.state.ar.us.

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Arkansas Pollution Control and Ecology Commission

The one-hundred and fifty (150) mile Buffalo River flows through the Ozarks in northwestern Arkansas. The upper 15.8 miles of the Buffalo River are part of the Nation's wild and scenic river system under the federal Wild and Scenic River Act, 16 U.S.C. § 1274(a)(135). The lower one-hundred and thirty-five (135) miles of the Buffalo River, including the River's back waters, riparian zone, and adjacent wetlands, are included in the national park system administered by the National Park Service. 16 U.S.C. § 460m-8 to 460m-14. The entire one-hundred and fifty (150) mile length of the Buffalo River is listed in the National Park Service's Nationwide Rivers Inventory that potentially qualify as wild, scenic, or recreational river areas.

The Buffalo River's watershed is located in a karst region. Karst geology is comprised of an abundance of limestone. Limestone is typically porous rock that can form pathways resulting in rapid discharges into nearby ground and surface water resources.

The Buffalo River's watershed provides habitat for numerous species of trees, plants, birds, game, and aquatic life. It is estimated that more than seven-hundred and fifty-thousand (750,000) people visit the Buffalo River, and the Buffalo National River Park area, to fish, float, swim, hike, camp, and engage in other recreational activities.

On November 1, 2011, the Arkansas Department of Environmental Quality ("ADEQ") issued National Pollution Discharge Elimination System (NPDES) General Permit ARG590000. General Permit ARG590000 applies to Concentrated Animal Feeding Operations (CAFO's) that are located in the State of Arkansas. General Permit ARG590000 covers any operation that meets the definition of a CAFO. The Arkansas Pollution Control and Ecology Commission also permits confined animal operations pursuant to Commission Regulation No. 5.

Swine CAFOs and swine confined animal operations have a propensity to produce large amounts of manure and wastewater annually. The manure and wastewater from a swine CAFO and swine confined animal operations are typically land applied. Because General Permit ARG590000 does not distinguish between karst regions and other regions of the State, and because Commission Regulation No. 5 and General Permit ARG590000 do not expressly limit swine CAFOs and swine confined animal operations from being established in the Buffalo River's watershed, the Commission finds that a proliferation of medium and large swine CAFOs and swine confined animal operations in the Buffalo River's watershed will pose an unnecessary risk to the public health, safety and welfare which requires a change in existing rules and an immediate moratorium on the establishment of any new medium and large swine CAFOs and medium and large swine confined animal operations in the Buffalo River's watershed over the next one-hundred and eighty (180) days. This moratorium will allow for the initiation, and potential adoption, of rule changes that will prohibit future medium and large swine CAFOs under Regulation No. 6 and medium and large swine confined animal operations under Regulation No. 5 from being established in the Buffalo River's watershed.

For the purposes of this moratorium, a medium or large swine CAFO or confined animal operation is a CAFO or confined animal operation with either seven-hundred and fifty (750) or more swine weighing fifty-five (55) pounds or more; or three thousand (3000) or more swine weighing less than fifty-five (55) pounds. For the purposes of this moratorium the Buffalo River's watershed is the area within the United States Geologic Service Hydrologic Unit Code 11010005. The Commission enacts this moratorium pursuant to its authority found at Ark. Code. Ann. § 8-4-202 *et seq.*, and the Director of ADEQ shall not issue any new permits or provide coverage under Regulation No. 5 or Regulation No. 6 for medium or large swine confined animal operations or CAFOs for the next one-hundred and eighty (180) days from the date of the adoption of this minute order.

This moratorium does not prohibit the Director from issuing a permit renewal or permit modification for a medium or large swine CAFO or confined animal operation with an active permit as of the date of the adoption of this minute order. This moratorium shall also not prohibit the Director from issuing a new permit or permit modification under Regulation No. 5 or Regulation No. 6 for a medium or large swine CAFO or confined animal operation active as of the adoption date of this minute order, as long as any new permits or permit modifications will not increase the number of swine currently permitted in the Buffalo River's watershed.

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SUBMITTED BY: Charles Moulton

PASSED: 04/25/14