

ADEQ

ARKANSAS
Department of Environmental Quality

January 3, 2013

Mr. Kevin G. Cheri
Superintendent
United States Department of the Interior
National Park Service
Buffalo National River
402 N. Walnut, Suite 136
Harrison, AR 72601

Re: General Permit ARG5900000

Dear Mr. Cheri:

Thank you for your recent correspondence concerning a new hog farming operation (C&H Farms, Inc.) in the vicinity of Mt. Judea, AR. We hope the following addresses the questions you have raised regarding this matter.

The United States Environmental Protection Agency ("EPA") finalized federal regulations governing NPDES permits for Concentrated Animal Feeding Operations (CAFOs) in 2008. The Arkansas Department of Environmental Quality ("ADEQ") has been authorized by EPA to administer the NPDES program in Arkansas, and this authorization includes the issuance of general permits, which are statewide permits. In 2011, ADEQ issued a general NPDES permit for CAFOs (ARG590000). This permitting decision was issued in accordance with the administrative procedures set forth in the Arkansas Pollution Control and Ecology Commission's ("APC&EC") Regulation No. 8. Specifically, public notice of the draft general permit was published on February 10, 2011 and April 18, 2011, in the Arkansas Democrat Gazette. Six public meetings and hearings were held to make the public and the regulated community aware of the permit requirements and to provide an opportunity for the public to voice concerns and make any comments on the proposed permit. In addition to publishing notice of the formal public comment period, ADEQ also sent via email a copy of the draft CAFO permit, the fact sheet, and public notice to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health for review. ADEQ received comments from 13 commenters.¹ After considering the public comments received, the final permitting decision was issued on October 6, 2011, and the CAFO general permit became effective on November 1, 2011.

A general permit is a statewide permit subject to the public notice requirements for statewide permits. Any person who submits comments on the record during the public comment period

¹ Comments were received from Butterball, LLC, Beaver water District, The Arkansas Farm Bureau Federation, Natural Resources Conservation Service, Terracon Consultants, Inc., Tyson Foods, Vince Chadick, Bob Shofner, Lisa Widner, Bruce Jackson, Merle Gross, Don Mason, and Gene Pharr.

has standing to appeal the final permitting decision in accordance with the APCE&EC's Administrative Procedures. The final permitting decision to issue the CAFO general permit was not appealed and the time allowed for an appeal has run.

The CAFO permit contains numerous provisions which are designed to protect surface and ground waters, including the development and implementation of a site-specific nutrient management plan. For your ease of reference, I have enclosed a copy of the CAFO general permit.

Under the CAFO general permit, any operator wishing to obtain coverage must demonstrate its ability to meet the requirements of the permit by submitting, among other things, a Notice of Intent (NOI) and a Nutrient Management Plan (NMP) that meets the requirements of 40 CFR 122 and 412 and that has been developed in accordance with the Natural Resource Conservation Service Practice Standard Code 590, including the 2010 Arkansas Phosphorus Index. The decision to grant coverage to an operator under a general permit is not a final permitting decision subject to appeal. However, CAFO general permits do offer an extra opportunity for public review. Under the CAFO general permit, if the Director makes a preliminary determination that the NOI meets the permitting requirements, the Director provides notice of that preliminary determination on ADEQ's website and invites the public to review and provide comments on the NOI and nutrient management plan during the public comment period.

On June 13, 2012, C & H Hog Farms, Inc. submitted an NOI and other information required to obtain coverage under the CAFO general permit. In accordance with Condition 5.1 of the CAFO permit, the NOI and other information were published on the ADEQ website. (For your ease of reference a copy of the submitted information is attached and also is available online at: http://www.adeg.state.ar.us/water/branch_permits/general_permits/generalpermitspn/arg590000_generalpermitspn.asp.) A public comment period was provided for 30 days starting June 25, 2012. No comments were received and a Notice of Coverage for this facility was issued on August 3, 2012. In addition to the CAFO general permit, the facility also obtained coverage under the Stormwater Construction General Permit (ARR150000; tracking no. ARR153893). The Stormwater Construction General Permit is designed to minimize sediment runoff during facility construction.

The CAFO general permit requires facilities to design manure storage ponds to provide adequate storage to prevent an overflow during a 25-year, 24-hour rain event. An evaluation of the adequacy of the designed manure storage structure is conducted using the most recent version of the Soil Plant Air Water (SPAW) Hydrology Tool, which is a computer modeling program developed by the Natural Resources Conservation Service (NRCS). The evaluation requires inputs to the SPAW Hydrology Tool such as daily precipitation, temperature, and evaporation data, user-specified soil profiles representative of the CAFO's land application areas, planned crop rotations consistent with the CAFO's Nutrient Management Plan, and the final modeled result of no overflows from the designed open manure storage structure.

The CAFO general permit requires land application of wastewater from the ponds to be conducted in accordance with the rates and at the times specified in the NMP, while maintaining specified setback distances from surface water, property lines, and occupied buildings.

The CAFO general permit also requires operators to conduct regular inspections of equipment and structures, including the depth marker in the ponds which is required to ensure that adequate storage is maintained. Additionally, the operator is required to maintain records of these inspections, as well as records relating to land application. The CAFO general permit also provides that in the event of any discharge of pollutants from a storage pond, the permittee is required to notify ADEQ and to sample the discharge for the following parameters: Biochemical Oxygen Demand (BOD5), Total Suspended Solids (TSS), Fecal Coliform Bacteria (FCB), Total Phosphorus (TP), Ammonia Nitrogen (NH3-N), Total Nitrogen (TN), Nitrate Nitrogen (NO3) and pH. The sample results must be submitted to ADEQ within thirty (30) days of the discharge event. ADEQ will review this information and determine if any enforcement action is required.

The above information is only a brief summary of some of the requirements contained in the CAFO general permit designed to protect surface and ground water. I encourage you to review the attached permit for more specific information about the requirements related to the production and land application areas, the nutrient management plan, and record keeping and reporting requirements.

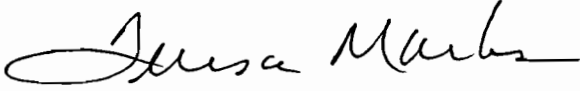
Thank you for the information related to the snuffbox (*Epioblasma triquetra*) and other endangered species. The proposed hog farm covered by the CAFO general permit is located approximately 6 stream miles from the Buffalo River on Big Creek. The National Park Service operates a water quality monitoring station (BUFT06) on Big Creek located at Newton County Road Number 39, which is approximately 0.5 miles upstream of the Buffalo River. This station is sampled quarterly by Park Service personnel and the samples are delivered to the ADEQ Water Quality Laboratory in Little Rock for analysis. Although the operation of the hog farm should not impact surface waters in the area, this station, in conjunction with the routine inspections performed by ADEQ, will help identify any potential impacts from any activities conducted within the watershed. Information concerning this monitoring station can be located at the following URL:

http://www.adeg.state.ar.us/techsvs/water_quality/water_quality_station.asp

Finally, I note your request to place a moratorium on all new liquid waste agricultural systems within the Buffalo River watershed. The CAFO general permit is a statewide permit and provides no exceptions for the Buffalo River Watershed. However, proposals to restrict activities within a specific watershed are not without precedent, but ADEQ does not have the authority to establish a permit moratorium. Under the Arkansas Water and Air Pollution Control Act, it is the Arkansas Pollution Control and Ecology Commission which may suspend the processing of a category of permits or declare a moratorium on a type or category of permits (see Ark. Code Ann. §8-4-202).

As requested, I am attaching a copy of the CAFO General Permit and the NOI submitted by C & H Hog Farms, Inc. If after reviewing this information, you have any additional questions, please feel free to call me. Please be assured that ADEQ agrees that the Buffalo River is a precious natural resource which must be protected and appreciates the National Park Service's interest in this matter

Sincerely,

A handwritten signature in black ink that reads "Teresa Marks". The signature is fluid and cursive, with the first name "Teresa" being more prominent than the last name "Marks".

Teresa Marks
Director

cc: The Honorable Mike Beebe, Governor of Arkansas
The Honorable John Boozman, Senator, U.S. Senate
The Honorable Mark Pryor, Senator, U.S. Senate
The Honorable Rick Crawford, Representative, U.S. Congress
The Honorable Steve Womack, Representative, U.S. Congress
U.S. EPA, Region 6
U.S. Fish and Wildlife Service
Arkansas Canoe Club
Ozark Society
National Parks and Conservation Association
Mr. Marc Harrison, Governor's Office