

Comments on Draft “Final Environmental Assessment (EA), C&H Hog Farms (C&H),
Newton County, Arkansas” dated December 2015

I have reviewed the above mentioned document and respectfully submit the following comments to be addressed in the administrative record. These comments/corrections are sorted as they occur in the document and are not sorted by level of importance.

Section 1.1.3:

It should be noted that ARG590001 is not a permit. It is a “permit tracking number.” The permit that ARG590001 operates under is ARG590000.

It should be noted that permit tracking number ARR153893 for stormwater construction activity is still active (as of 01/28/2016) because neither the permittee nor ADEQ has closed it yet. It should also be noted that ARR153893 only authorized 8.2 acres of soil to be disturbed, but the draft EA states that approximately 12.5 acres were cleared for construction. The discrepancy should be discussed in the final EA.

According to ADEQ’s website

(<https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/Permits/3540-WR-4.pdf>), the permit for the previously owned facility (C&C Hog Barn (AFIN: 51-00020 & State Water Non-Discharge Permit No. 3540-WR-4)) only authorized 200 pigs (not 300), and it only authorized 125 acres of land application (not 616). The final EA should note that C&H has the capacity to hold over ten times as many animals and is permitted to land-apply on five times as much land. The draft EA also states that C&C and C&H are “nearby.” The two facilities are over seven miles from each other, and C&C is approximately three times as far from the Buffalo National River when considering stream miles. Thus, “nearby” does not appear to be accurate. If quantification of statements is possible, it should be used in the final EA.

The last paragraph in Section 1.1.3 describes the facility’s major modification application submitted on May 7, 2015. According to the records available on ADEQ’s website (https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_Pond%20Liner%20Application%20Inquiry_20150929.pdf), C&H sent an e-mail to ADEQ on 9/29/2015 asking if the synthetic liners have to be installed if the May 7, 2015 major modification application is ever approved. No written response from ADEQ was posted. Based on the content of the e-mail (“C & H Hog Farms may choose not to move forward with the actual installation of said liners/cover and may rather opt to continue utilizing the existing clay liners.”), it appears that the synthetic liners will likely not be installed even if they are approved. Thus, the final EA should assess the current situation without the liners based on the facts that they don’t currently exist and that C&H has recently expressed a preference that they don’t ever exist.

Section 2.1.1:

Citation ADEQ2015a (and other ADEQ links in the draft EA) is a broken link that no longer exists. To date, no documentation has been found on ADEQ’s website that indicates the onsite soil/clay was properly excavated, applied, compacted, and tested in place when the pond bottom liners were constructed. There should be a final engineer’s as-built report on the “clay” liners with quality control test results, but none has been found. This lack of documentation on the existing liners and the requisite quality assurance/quality control measures that may or may not have taken place should be noted in the final EA. If documentation is found, it should be cited in the final EA.

Section 2.1.2:

The statement that “Manure sampling and analysis are conducted prior to each land application by laboratories identified in the NMP” is not correct. Per APC&EC Reg. 5 and the draft NMP dated May 2012 (the only version found so far on ADEQ’s website) (https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_NOI_20120625.pdf), analyses must be made before the initial land application (page 4 of Section B of the draft NMP) and once per year thereafter (Page 3 of Section B of the draft NMP). Thus, the statement “prior to each land application” is misleading. It should say something like “prior to the initial land application and annually thereafter” unless the facility can provide copies of any lab analyses done each day (ideally for each field) when land application has occurred. No documents found thus far indicate that a separate lab analysis was done for each field. A separate application rate was calculated for each field, but a separate lab analysis was not required. If such documents are found, the final EA should cite or include those documents.

Section 2.1.3:

ADEQ does not approve engineers as stated in the text. An Arkansas-registered professional engineer stamped the draft NMP dated May 2012. According to the title page, it was prepared by DeHaan, Grabs & Associates, LLC as noted in the draft EA.

Pages 2-5 & 6 of the draft EA say “Waste/wastewater is not applied to ... frozen ground, or during rainfall events,” “Wastes are not applied on snow or frozen ground **unless unavoidable** [emphasis added]. If unavoidable, such application must comply with conditions specified in NPDES General Permit ARG590000,” and “Wastes are not applied immediately after rain or within 12 hours of forecasted rain unless it can be immediately incorporated into the soil. A vacuum tanker may be used to knife inject the nutrients for soil incorporation.” It is assumed that these statements are from a more recently proposed NMP than is currently available on ADEQ’s website. None of these three statements agrees with APC&EC Regulation No. 5 which says “Land application of waste/wastewater **shall not** [emphasis added] be undertaken when soil is saturated, frozen, covered with ice or snow, or when significant precipitation is reasonably anticipated in the next twenty-four hours” (APC&EC Reg. 5.406(B)). It is also worth noting in the final EA that neither “significant precipitation” nor “reasonably anticipated” are defined in the Regulation. This is a deficiency in the current Regulation, although 4.2.1.6 of NPDES General Permit No. ARG590000 uses the phrase “when precipitation is imminent (>50% chance of rain).”

Page 2-6 also states “Waste/wastewater is not applied within 100 feet to any downgradient surface waters ...” While the word “down-gradient” appears in 4.2.1.5 of Part 4 of NPDES General Permit No. ARG590000, it is not consistent with APC&EC Reg. 5.406(D), which does not limit surface waters to those that are down-gradient. This inconsistency should be noted in the final EA because the APC&EC regulations supersede any NPDES permit.

Section 2.1.4:

Given the recent e-mail from C&H cited above for Section 1.1.3, this section could be deleted since the proposed liners will likely never be installed. This comment is applicable wherever the proposed liners are mentioned in the draft EA.

Section 3.2:

(Surface Water) It should be noted that the Arkansas definition of “waters of the State” is more inclusive than the federal definition of “waters of the United States.” The definition is codified in Arkansas Code Annotated (A.C.A.) § 8-4-102(10) and says “‘Waters of the state’ means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public

or private, which are contained within, flow through, or border upon this state or any portion of the state.”

Section 3.2.1:

Page 3-13: From the initial Notice of Intent (NOI)

(https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/AR590001_NOI_20120625.pdf), it appears the initial soil sampling only went 18.5 feet down (maximum). If so, the final EA should be caveated to indicate that the “geotechnical analysis” was limited to surface features. It should also be noted that the borings were supposed to be made at least two feet below the planned bottom of the excavation per APC&EC Regulation 5.404. The NOI shows Boring 2 went from grade (~912’) down 18.5 feet (to ~893.5’) while the bottom of Pond 2 was to be at 893.1 feet less 18” for the compacted clay liner (891.6’). Thus, unless additional soil testing was made during the excavation, the NOI’s “geotechnical analysis” was ~3.9 feet too shallow to meet the Regulation 5.404 requirement. This issue should be discussed in the final EA, or if additional soil sampling data are available, links to any additional documentation should be included.

Section 3.2.2:

The fields that are prone to flooding according to the soils map should be specifically listed in the final EA with a summary of the use of each to date by C&H.

It should also be noted that the waste storage ponds were not designed per APC&EC Regulation 6.202(B). This regulation includes by reference the “10 States Standards” which require a minimum of two feet of freeboard for small pond systems and three feet for large pond systems (10 States Standards Section 93.415). The NMP only requires one foot of freeboard.

Overall Comment:

It is my understanding that this process includes a court-ordered mandate to take a “hard look” at the situation. Writing a document that can be summed up in two phrases is not a “hard look.” “ADEQ gave them a permit,” and “It’s there, so there’s nothing we can do,” is not a “hard look.” Noting the errors, oversights, and ineptitudes of the process thus far would be a “hard look.” Not everything here is ADEQ’s fault, so feel free to spread the blame around as the shoe fits. (Ok. Ok. It’s mostly ADEQ’s fault.)

If you need clarification or more information, please contact me at the address below. I would like to receive an electronic copy of the final EA including the response to comments and instructions on how to file an appeal.

Respectfully,

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