

EXHIBIT A

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF THE OZARK SOCIETY AND
THE ARKANSAS PUBLIC POLICY PANEL**

DOCKET NO. 14-002-R

**THE OZARK SOCIETY AND THE ARKANSAS PUBLIC POLICY PANEL'S
STATEMENT OF BASIS AND PURPOSE**

Petitioners, The Ozark Society and The Arkansas Public Policy Panel, submit the following Statement of Basis and Purpose:

I. Background

1. The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal rules and regulations implementing and effectuating the powers and duties of the Commission and the Arkansas Department of Environmental Quality (“ADEQ”) under the Arkansas Air and Water Pollution Control Act, Ark. Code Ann. §§ 8-4-201(b)(1)(A) and 8-4-202(a).

2. Ark. Code Ann. § 8-4-202(c)(1) and APCEC Reg. 8.809 grant third parties, such as the petitioners herein, the right to petition the Commission to initiate rulemaking.

3. On April 11, 2014, the Ozark Society and the Arkansas Public Policy Panel filed a Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 5, entitled Liquid Animal Waste Management Systems, to prohibit the ADEQ Director from issuing new APCEC Reg. 5 permits for confined animal operations which house 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds, in the Buffalo National River Watershed.

4. On April 21, 2014, the Ozark Society and the Arkansas Public Policy Panel filed an Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 5.

5. On June 17, 2014, petitioners and ADEQ held a public hearing at 6:00 p.m. in the Durand Conference Center, Room A, North Arkansas College, 303 Main St., Harrison, AR.

6. The public comment period expired at 4:30 p.m. on July 1, 2014.

7. ADEQ filed a responsive summary on September 4, 2014. Petitioners filed a Responsive Summary on October 15, 2014.

8. After consulting with the Governor's Office, petitioners filed a Notice of Amended Proposed Rule on June 19, 2015, which added a paragraph (E) to the proposed rule to permit the Director of the Arkansas Department of Environmental Quality to revisit this rulemaking five years after its effective date.

9. On July 6, 2015, petitioners filed a Second Notice of Amended Proposed Rule which modified paragraph (E) to require, not just permit, the Director of the ADEQ to revisit this rulemaking five years after its effective date. Petitioners filed the Second Notice of Amended Proposed Rule pursuant to direction and feedback received the same day from legislative review conducted by a joint meeting of the Arkansas Legislature's House and Senate Public Health, Welfare, and Labor Committees.

10. The rulemaking is now scheduled for additional, and final, legislative review on August 19, 2015, before the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council.

11. The Ozark Society and the Arkansas Public Policy Panel file this Statement of Basis and Purpose, and accompanying Responsive Summary, in accordance with Regulation No. 8.815, sections (A)(1) and (2).

II. Basis and Purpose

12. Congress designated the Buffalo River as the first National River in 1972 "for the purposes of conserving and interpreting an area containing unique scenic and scientific features and preserving [it] as a free-flowing stream." 16 U.S.C. § 460m-8.

13. APCEC Reg. 2 affords the Buffalo River the highest category of designated use,

“Extraordinary Resource Water,” and Tier III antidegradation protection.

14. The National Park Service estimates that the Buffalo National River attracted more than \$38,232,000.00 in direct visitor spending during 2011.¹ In just three years, this estimate rose more than \$18,000,000 to \$56,575,700 in 2014.²

15. The Buffalo National River is an essential part of Arkansas’s economic, environmental, and cultural fabric.

16. The proposed amendment to Regulation No. 5 to prohibit the ADEQ Director from issuing any additional permits pursuant to its Regulation No. 5 for the operation of new confined animal operations which house 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds, is necessary to prevent degradation of the Buffalo National River.

17. Swine confined animal operations of this size produce millions of gallons of waste per year.

18. Wastes from these operations are typically lagoon stored and land applied on nearby fields.

19. Waste storage lagoons pose a threat of a catastrophic release of liquid waste.

20. Land application often results in nutrient runoff.

21. The Karst topography typical of the Buffalo River Watershed creates the potential for rapid movement of wastes to the subsurface and nearby water bodies.

22. Additional storage and land application of liquid waste from new swine confined animal operations of the size defined above present a threat to the existing high water quality of the Buffalo National River.

¹ *Economic Benefits to Local Communities from National Park Visitation*, 2011, NPS, available at <http://www.nature.nps.gov/socialscience/docs/NPSSystemEstimates2011.pdf>.

² *2014 National Park Spending Effects*, 2014, NPS, available at http://www.nature.nps.gov/socialscience/docs/VSE2014_Final.pdf.

23. Prohibiting future APCEC Reg. 5 permits for a certain, defined size of swine confined animal operations in the Buffalo National River Watershed will eliminate this threat for the next five years.

24. The evidence submitted during the public comment period for this rulemaking supports the basis and purpose stated above. Those documents are incorporated by reference into this Statement of Basis and Purpose. Those studies, reports, and facts demonstrate that the proposed amendment to Regulation No. 5 is based upon generally accepted scientific knowledge or engineering practices.

III. Conclusion

25. The Ozark Society and the Arkansas Public Policy Panel request that the Commission adopt the proposed amendment to Regulation No. 5.

Respectfully Submitted,

By:




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CERTIFICATE OF SERVICE

I, Ross Noland, hereby certify that a copy of the foregoing has been sent via electronic mail to the following parties of record, this 14th day of August, 2015.

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