

**Mark Richards  
11 Razorback Rd  
Rogers, AR 72758**

DELIVERED VIA EMAIL

Ms. Katherine McWilliams  
Engineer  
Arkansas Department of Environmental Quality  
5301 Northshore Dr.  
North Little Rock, AR 72118-5317

Re: Permit 5264-W; AFIN 51-00164; C&H Hog Farms, Inc. ("C&H" or "Applicant")

Dear Ms. McWilliams:

I am writing as a concerned citizen. The opinions contained herein are solely my own. I do not represent any other organizations or individuals.

Draft permit 5264-W was improperly approved by the Arkansas Department of Environmental Quality ("ADEQ"). A final permit should be denied for the following reasons:

**ADEQ is Precluded Under 5.303 of Regulation 5 From Approving a Permit for a CAO that Discharges**

Pursuant to Regulation 5.201 C&H is by definition a Confined Animal Operation ("CAO"). In addition, pursuant to Regulation 5.201 C&H is also defined as a Concentrated Animal Feeding Operation ("CAFO"). Under the Clean Water Act, CAFOs are considered point sources (U.S.C. 33 Section 1362 (14)). These three facts (that C&H is a CAO, a CAFO and a CAFO is a point source) are indisputable.

In a revision of its Geologic Investigation dated July 3, 2012, DeHann, Grabbs and Associates, LLC calculated the Seepage Rate for the C&H waste holding ponds to be 3,448 gallons/acre/day to 4,064 gallons/acre/day. While Regulation 5.402 does state that "*Designs and waste management plans shall be in accordance with this Chapter and the following United States Department of Agriculture Natural Resource Conservation Service technical publications:...* (2) *Agricultural Waste Management Filed Handbook, as amended*", Regulation 5.303 is unequivocal in its prohibition of discharge. It states "*the operator of a confined animal operation...shall not allow or cause a point source discharge from any part of the liquid animal waste management system.*". There are no exceptions to this Prohibition, either stated or implied. It is a zero tolerance Regulation.

Furthermore, this permit fails to take into account evidence that discharge into Big Creek, and possibly the Buffalo National River, is already occurring. Data collected by the Big Creek Research and Extension Team (BCRET) shows that nitrate levels are consistently higher downstream of this CAFO than above. The National Park Service, with concurrence of Arkansas Game and Fish Commission, has requested a 303(d) listing for impaired status for Big Creek due to low dissolved oxygen (DO) levels, a consequence of nutrient overloading. A recent report by USGS confirmed low DO levels in Big Creek.

Section 40 CFR 122.23(d) provides that a CAFO proposes to discharge if it is designed, constructed, operated and maintained such that a discharge will occur. This applies regardless of volume or duration of the discharge. The US Environmental Protection Agency contemplates that CAFO operators will objectively assess whether a discharge from the CAFO, including any land application areas under control of the CAFO, is occurring or will occur.

It is irrefutable that the C&H waste lagoons are discharging up to 4,000 gallons/acre/day (as certified by their own engineers). As noted above there is overwhelming scientific evidence of increased pollutants in Big Creek which coincides with commencement of C&H operations. An objective assessment leads to the conclusion not only that discharge will occur but is, in fact, occurring. It is clear that this CAO does not meet the permitting requirements set forth in section 5.303 of Regulation 5. This permit should be denied.

#### **Lack of Compliance With AWMFH (1)**

Notwithstanding the fact that Regulation 5 cannot be used to obtain point source discharge permit, C&H's application does not comply with Regulation 5.402 which states, "*Designs and waste management plans shall be in accordance with this Chapter and the following United States Department of Agriculture Natural Resource Conservation Service technical publications:*  
(1) *Field Office Technical Guide, as amended.*  
(2) *Agricultural Waste Management Field Handbook [AWMFH], as amended.*"

C&H did not comply with the AWMFH. Therefore C&H did not comply with guidance required under Reg. 5.402 and this permit should be denied.

Among other items, the application and waste management plan contained therein:

1. Do not consider geologic (Karst) and groundwater conditions (Chapter7),
2. Include waste application in excess of agronomic needs,
3. Fail to consider the impact of breach or accidental release from storage lagoons
4. Contain no contingency or emergency plan in case of accidental release

Failure to comply with the AWMFH is a violation of Regulation 5.402. Therefore this permit should be denied.

### **Deficient Nutrient Management Plan(1)**

The Nutrient Management Plan (“NMP”) is in error. For example:

1. Assumptions of forage production at 6 tons per acre are unrealistically high for the area.
2. Waste is applied in excess of agronomic need as evidenced by most recent soil tests showing that a number of fields have “above optimum” levels of phosphorus and U of A recommends no additional phosphorus be applied. Winter waste applications when forage is dormant is contrary to agronomic need.
3. Hay is not harvested from all fields so the nutrients are not removed efficiently.
4. Assumptions of rotational grazing are not correct. Grazing practices in the area are not as beneficial as projected, resulting in higher API than calculated.
5. Soil Test Phosphorus is rising on most fields increasing the long-term impact on receiving waters. This is not sufficiently accounted for in the API Planner.
6. Some of the spreading fields have very high slopes and very thin soils that cannot meet the assumptions in the API.
7. The Arkansas Phosphorus Index does not adequately account for erosion of pasture. Erosion is very effective in transferring Phosphorus to receiving waters.
8. It appears that other nutrient sources (i.e.- poultry litter) are used in the area. These must be accounted for in the API planner.
9. Long-term waste application at rates indicated in the Planner will cause eutrophication in the receiving waters, specifically the Buffalo River.

Based on these and other deficiencies in the NMP this permit should be denied.

### **Adverse Economic Risks Greatly Outweigh Benefit**

According to a National Parks Service report issued in 2016, the Buffalo National River was visited more than 1.4 million times in 2015 resulting in an economic output of more than \$72 million. Nearly 1,000 jobs exist because of this tourism.

Conversely, C&H has generated approximately 10 jobs for family members of the owners. I know of no reasonably prudent person who would risk \$72 million of economic value for 10 jobs.

### **Violation of The Arkansas Water and Air Pollution Control Act**

The Arkansas Water and Air Pollution Control Act of 1949 makes it unlawful to “cause pollution...of any waters of this state,” or to place any sewage, industrial waste or other wastes in a location where it is likely to cause pollution of any waters of this state.” It is inevitable by locating point source animal waste lagoons and application fields so close to Big Creek that water pollution will occur (and in fact there is already evidence of discharge).

Granting this permit would be in violation of The Arkansas Clean Water and Air Pollution Control Act and should be denied.

**Violation of the Antidegradation policy under 40 CFR 131.12(2)**

40 C.F.R. Section 131.12(a)(3) of the antidegradation policy states “*Where high quality waters constitute an outstanding National resource, such as waters of National and State parks...that water quality shall be maintained and protected.*” Outstanding National Resource Waters, such as the Buffalo National River, are afforded the highest level of protection under the anti-degradation policy. Only activities that cause short-term and temporary degradation may be allowed.

Operation of a CAFO in the watershed of the Buffalo National River does not protect its water quality. On the contrary such operation serves only to threaten the water quality.

Granting of this permit is in violation of 40 CFR 131 and should be denied.

Sincerely,

/s/Mark Richards

*(1) Reference is made to Press Release from Buffalo River Watershed Alliance dated March 1, 2017*

*(2) Reference is made to comments from National Parks Conservation Association dated March 10, 2017*

From: [Richardsmt](#)  
To: [Water Draft Permit Comment](#)  
Cc: [Keogh, Becky](#); [McWilliams, Katherine](#)  
Subject: Permit 5264-w  
Date: Saturday, March 11, 2017 2:20:50 PM  
Attachments: [Permit 5264W 3.6.17 \(1\).docx](#)

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