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April 14, 2016

Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Via electronic delivery to Water-Draft-Permit-Comment@adeq.state.ar.us and as oral comments at public hearing in Jasper, AR April 14, 2016

RE: Buffalo River Coalition comments on Draft Renewal for NPDES General Permit ARG590000 for the construction and operation of a Concentrated Animal Feeding Operation

These comments are presented on behalf of the Buffalo River Coalition, which includes the Buffalo River Watershed Alliance, the Arkansas Canoe Club, the Ozark Society and the National Parks Conservation Association. **We oppose renewal of ARG590000 for the following reasons.**

Comment 1: Unlike other facilities typically covered by the Regulation 6 NPDES General Permitting program, such as publicly owned treatment works, wastewater treatment facilities, small construction sites, and pesticide applicators, AFOs and CAFOs, particularly swine operations, produce a significant amount of untreated animal waste, which is potentially hazardous to human health and the environment.

There is the distinct risk of application of waste in excess of agronomic needs, as well as the possibility of waste discharge in a storm event, both of which could lead to runoff and/or groundwater contamination. (An example of such excess application can be found in the sole facility currently permitted under ARG590000. The most recent soil reports for this operation show that, after less than three years of waste applications, all but one of the fields sampled now have soil test phosphorus levels which are “above optimum” for the crops being produced. Further waste applications to these fields would be in excess of agronomic needs, increasing the risk of runoff and groundwater contamination.) These risks are amplified in environmentally sensitive locales such as karst areas and watersheds of Extraordinary Resource Waters. It is therefore important to undertake a thorough site-specific evaluation, including consideration of hydrogeological factors, for each individual AFO/CAFO permit application to avoid karst locations and to assure adequate protection of waters of the state and other natural resources.

Such individualized site-specific evaluation is contrary to the concept and intent of the General permitting program and is more appropriately carried out under the Regulation 6 Individual permitting program. Therefore, Regulation 6 ARG590000 should not be renewed and instead all new or renewal applications for AFOs and CAFOs should be required to seek coverage exclusively under the Regulation 6 NPDES Individual permitting program which best regulates the facility’s unique location, permit conditions and limits.

Comment 2: We strongly advocate that, as part of the Regulation 6 ARG590000 review process, ADEQ should

draft a statement that allocates responsibility for compliance with the CAFO requirements by defining the individual permit holder (under whichever regulations they are covered) as an *organization* which owns the real property where the operation is located and can assure *that* "**…** *a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made*"**.** This language is taken from our neighboring state of Missouri's CAFO permit requirements and would serve to attach responsibility of ownership to a permit holder: ***10 CSR 20-6.010(3)***

Comment 3: We oppose the draft proposal under Part 1.9 to eliminate the requirement for a separate construction permit. As stated to the Arkansas Pollution Control and Ecology Commission on October 23, 2015, *"The [Buffalo River Watershed] Alliance believes the construction permitting process serves an important purpose in allowing the ADEQ to review and approve an engineer's construction plans, provide notice to the public, and ensure that disposal systems are constructed in accordance with the plans submitted and approved. Any change which weakens the permitting process is against the public interest and is one that the Alliance would strongly oppose."* (This statement is attached below in its entirety)

The current requirements under Section 6.202(A) and (B) of Regulation 6, which require a separate construction permit in addition to the NPDES permit, should remain in effect.

The fact that ADEQ is seeking a change in the regulations such that a separate construction permit would no longer be required, confirms that ADEQ believes that ARG590000

regulations per Regulation 6.202(A) and (B) do in fact currently require a separate construction permit. This supports our claim before the Commission (contained in the attached statement) that ADEQ did not properly enforce regulations when it failed to require a separate construction permit for ARG590001.

Comment 4: As required by the federal anti-degradation policy at 40 CFR §131.12. ADEQ is required by 40 CFR §131.12(a) to develop and adopt a statewide anti-degradation policy for point-source and non-point-source pollution and identify methods for implementing that policy. The guidance generally includes:

Processes for identifying the anti-degradation protection level (i.e., the "*tier*") that applies to a surface water;

Procedures for determining baseline water quality (BWQ);

Approaches for assessing water quality degradation;

Procedures for identifying and assessing less degrading or non-degrading alternatives*;*

Procedures for determining the importance of economic or social development to justify significant degradation of high quality surface waters*;*

Information on intergovernmental coordination and public participation processes*.*

We strongly advocate as part of the Regulation 6 review process that ADEQ should draft an implementation plan and begin implementing these procedures immediately. The anti-degradation review should in all cases be done PRIOR to approval of any discharge permit.

Comment 5: Under Section 3.2 of the ARG590000 Fact Sheet, regarding Regulation 6.602, "Buffalo River Watershed Exclusion", the Big Creek Research and Extension Team (BCRET) is the sole source of data to be used to determine if the current Buffalo River watershed moratorium on swine CAFOs will be continued or eliminated. Other data sources should be included in this analysis, including data collected by the National Park Service, USGS and the Karst Hydrogeology of the Buffalo National River team. BCRET is studying a limited area and is generating limited data. Only by considering all reliable and relevant data, collected over a wider geographic area and larger timeframe, will ADEQ and the Commission be able to make a fully informed decision on impact to the Buffalo National River.

Comment 6: Section 2.2.2.2, which states, "*Maintain all records needed to document compliance with Part 4.5 of this permit*;" is wholly inadequate. Reports should be submitted to ADEQ on a quarterly basis in order to adequately monitor compliance with the NMP and the terms of the permit. (Also see Comment 8.)

Comment 7: Draft Section 5.1 which begins, *" For **new** facilities, public notification requirements…"* should be revised to read, "For **all** facilities…". This revision would be consistent with ARG500000 which states in 1.2.12.6, "*NOI REVIEW and PUBLIC NOTIFICATION PROCESS : **All** NOIs for permit coverage under this general permit will be reviewed by ADEQ prior to undergoing a public notification process"* (emphasis added).

Comment 8: Considering the high potential for environmental damage from swine CAFOs, and taking into account the unprecedented amount of taxpayer funds, countless hours of ADEQ time, and ongoing citizen scrutiny attributable to the permitting of ARG590001, all swine CAFO operators should be required to implement a water monitoring and assessment program at their own expense. Such monitoring should include collection and analysis of water samples from all water bodies, including streams, lakes and groundwater, which are potentially impacted by the CAFOs waste disposal program, whether through runoff, infiltration or other discharge. Such monitoring should be paid for by the permittee but samples should be collected and analyzed by a qualified independent third party. Results should be submitted to ADEQ on a quarterly basis and made publically available for citizen review.

Thank you for the opportunity to submit these comments.

On behalf of the Buffalo River Coalition,

Gordon Watkins, President, Buffalo River Watershed Alliance

Attachment: Statement to APC&E Commission, October 23, 2015

CC via email:

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ATTACHMENT

Statement on behalf of BRWA during public comments section of Arkansas Pollution Control and Ecology Commission Meeting October 23, 2015

The Buffalo River Watershed Alliance comments on the Proposed Schedule of Regulation Changes listed on the Agenda as Item #21, specifically the proposal to initiate rulemaking with respect to Regulation 6.202(A) and (B) to amend Regulation 6 to provide that a construction application is not required for general permits that authorize construction.

As you all may know, the Alliance filed a formal complaint with the ADEQ on September 21, 2015, seeking action by the ADEQ with respect to numerous complaints the Alliance and others have previously filed with respect to C&H Hog Farms. Part of the Alliance's Complaint was based on the Department's inability to produce a copy of a construction permit for C&H Hog Farms despite numerous FOIA requests by both the Alliance and its counsel. Regulation 6.202 required C&H to apply for and receive a separate construction permit before beginning the operation of its hog farm under the NPDES permit it received. The NPDES permit issued to C&H authorizes discharges, not construction.

The Alliance believes the construction permitting process serves an important purpose in allowing the ADEQ to review and approve an engineer's construction plans, provide notice to the public, and ensure that disposal systems are constructed in accordance with the plans submitted and approved. Any change which weakens the permitting process is against the public interest and is one that the Alliance would strongly oppose.

From:	Gordon Watkins
To:	Water Draft Permit Comments
Cc:	Keogh, Becky
Subject:	ARG590000 Renewal Comments
Date:	Thursday, April 14, 2016 1:18:10 PM
Attachments:	Coalition Final Comments Reg 6 Renewal .pdf ATT00001.txt

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Attached please find comments submitted on behalf of the Buffalo River Coalition regarding renewal of NPDES ARG590000 General Permit for swine CAFOs..

Thank you,

Gordon Watkins, President
Buffalo River Watershed Alliance