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September 21, 2015

Ms. Becky Keogh, Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
N. Little Rock, AR 72118-5317

Via Hand Delivery

Re: Buffalo River Watershed alliance

Dear Director Keogh:

This firm represents the Buffalo River Watershed Alliance (the “**Alliance**”). Alliance members are owners of property and/or businesses in the Buffalo River Watershed, and its supporters span the state and region. The Alliance writes this letter as a formal complaint seeking action from the ADEQ to review thoroughly and analyze the environmental consequences of allowing an unprecedented 6,500 swine concentrated animal feeding operation (“**CAFO**”) on karst terrain in the watershed of the Buffalo National River. As support for this complaint, the Alliance encloses its prior requests for action (which were not definitively refused, but met with promises to continue evaluation) as well as expert opinions regarding the environmental impact of C&H Hog Farms. Finally, the Alliance has previously requested but failed to receive any evidence that C&H was issued a construction permit for construction of its waste ponds as required by Regulation 6.202 (2012).

Prior Complaints

For more than two years, our clients have written to ADEQ on several occasions, asking that the department revoke, suspend, or reopen Permit No. ARG5900001 issued to C & H Hog Farms (the “**C&H Permit**”). Most recently, on August 12, 2015, the Alliance filed a Permit Violation Complaint asserting that data collected by the University of Arkansas’s Big Creek Research Extension Team (“**BCRET**”) demonstrates that C&H is mishandling the storage and application of its waste in violation of the terms of its permit and the Nutrient Management Plan (“**NMP**”) based on BCRET data showing: E. coli and Total Coliform levels rising over time in house well samples; E. coli rising over time and showing pond leakage in Ephemeral Stream/Culvert and Interceptor Trenches; and significantly higher Nitrate-N levels at the downstream sampling location compared to the upstream location. The August 12, 2015 complaint is attached as Exhibit “A”. The Alliance requested that the ADEQ initiate an

investigation and analysis independent of BCRET and require corrective action and full compliance by C&H with its permit.

On August 21, 2015, you replied stating that ADEQ has reviewed the BCRET data and concluded that the data does not show any violation of the permit or NMP and that the data does not show persistent contamination of the groundwater. You also stated that ADEQ continues to work with the BCRET through its study, is confident that the study will provide a thorough investigation, and believes that data should continue to be collected through the study. Your response fails to recognize that the BCRET data was not analyzed. It only provided data. The failure to analyze the significance of the data is a testament to the Alliance's continuing concerns. The Memorandum of Agreement between the University of Arkansas System and the ADEQ does not absolve ADEQ from its authority and statutory duty to monitor the C&H Hog Farm's environmental impacts. Your response illustrates the ADEQ's complete reliance on BCRET data and refusal to investigate adequately whether C&H Hog Farm's operation is a danger to the Buffalo National River, Arkansas's waters, and the environment.

Prior communications to ADEQ outlined other problems that existed with the original C&H Permit application as well as additional information that became known after the permit was granted. These concerns have never been adequately addressed; rather the ADEQ merely promises continued evaluation. The delays in adequately addressing these concerns seriously jeopardize the quality of both the Buffalo National River and other groundwater. Specifically, those written communications were:

1. May 13, 2013 letter from Hank Bates to ADEQ outlining cause for revocation based on misrepresentations and significant omissions of relevant facts in C&H Hog Farms' permit application (Exhibit "B");
2. June 3, 2013 letter from Hank Bates to ADEQ enclosing a letter from karst geologist John Van Brahana recommending and requesting that the ADEQ suspend the C&H Permit until the geological issues outlined in his letter are properly assessed and addressed (Exhibit "C");
3. February 12, 2014 letter from Earthjustice to ADEQ regarding new relevant information concerning C&H Hog Farms that would justify a full reopening of C&H's permit to allow public review and comment (Exhibit "D") and May 3, 2015 letter following up on ADEQ's February 20, 2014 response to the February 12, 2014 letter from Earthjustice (Exhibit "D-1");
4. March 9, 2015 letter from Earthjustice on behalf of the Coalition in response to C&H's annual report specifically asserting that the issues presented constituted a substantial modification of the C&H Permit such that it should be reopened for public review and comment (Exhibit "E"); and

5. June 15, 2015 letter from Earthjustice on behalf of the Coalition once again urging the ADEQ to reopen the C&H Permit in its entirety for public review and comment (Exhibit "F").

Copies are attached to this letter.

Expert Opinions Showing Environmental Harm by C&H

In support of this complaint, the Alliance also submits its comments provided in response to the Draft Environmental Assessment ("EA") recently issued by the United States Department of Agriculture and the Small Business Administration and the supporting statements from the following experts:

- Dr. John Van Brahana, Ph.D., Professor Emeritus, Geosciences, University of Arkansas
- Dr. JoAnn Burkholder, Ph.D., William Neal Reynolds Distinguished Professor and Director of Center for Applied Aquatic Ecology, North Carolina State University
- James Gore, M.S. Candidate, Arkansas State University
- Dr. Michael Smolen, Ph.D., retired Professor, Biosystems and Agricultural Engineering, Oklahoma State University
- Dr. Steve Wing, Ph.D., Associate Professor, Epidemiology, University of North Carolina Gillings School of Global Public Health

The comments and incorporated exhibits are attached as Exhibit "G". The Alliance also submits the testimony of Dr. Tom Aley prepared for presentation at the August 27, 2015 public hearing at Jasper, Arkansas, attached as Exhibit "H".

The Alliance does not submit these comments for the purpose of proving the inadequacies of the EA (which is not for the ADEQ to determine), but for the purpose of illustrating the significant environmental impact of the C&H Hog Farms as shown by the scientific data and information proffered by these experts. Critical points made by these experts that are relevant to the ADEQ's ongoing assessment of the C&H Permit's environmental impact include:

- C&H Hog Farms is undoubtedly located on karst (characterized by rapid underground drainage and groundwater flow to surface waters). The Boone-St. Joe is a karst hydrostratigraphic unit that is permeated with conduits, epikarst and other enhanced solution features. Newton County has more caves, which only form in limestone and dolomite, than any other county in Arkansas. No geophysical studies or related investigations were conducted to delineate any karst features, subsidence and/or sinkholes under the waste lagoons, and shallow soil samplings could not adequately test for karst because karst is characterized in the bedrock underlying soil.
- Reliance on the study by BCRET is misplaced as the study is flawed, inadequate and non-representative. Other more extensive studies by National Park Service (NPS) and Karst Hydrogeology of Buffalo National River (KHBNR) must be considered.

- The BCRET's upstream-downstream water monitoring fails to consider how water moves through karst topography, relies on only 6-7 sites spanning a CAFO with more than 600 acres of waste spreading fields, and uses inappropriate upstream and downstream sampling sites that do not serve their intended functions as a control and a comparison to the control.
- Data collected by BCRET suggestive of contamination from the C&H facility should not be ignored; specifically, nitrate levels in Big Creek downstream of C&H are rising as are E. coli levels in the 325 feet deep house well, the interceptor trenches, and ephemeral stream.
- NPS/KHBNR monitoring at the confluence of Big Creek and Buffalo National River indicate that Big Creek is contributing to low dissolved oxygen (DO) levels in the Buffalo as well as increased E. coli levels. Low DO is an indicator of nutrient loading, and excessive algae growth and can negatively impact aquatic life, including endangered and threatened species. E.coli bacteria pose a threat to human health, particularly in recreational waters such as the Buffalo.
- C&H Hog Farms is causing significant odor and air impacts resulting in numerous citizen complaints. Airborne emissions of volatile organic compounds from CAFOs contribute to the offensive odors typical of these facilities. CAFOs can emit other air pollutants of concern, such as hydrogen sulfide, ammonia, and toxins less than 10 microns in diameter, including endotoxins, bacteria, yeasts, and molds. Though the housing yard and manure storage pits at CAFOs contribute to odor and air impacts, the vast majority of CAFO air emissions are associated with land application of waste. The odors and air pollutants emitted by swine CAFOs have deleterious effects on the health and wellbeing of surrounding communities as explained by Professor Wing.
- The critical habitat of the threatened Rabbitsfoot mussels, and the endangered Gray bats that dwell in the Buffalo River watershed will almost certainly be harmed by two and three quarter million gallons of swine waste applied every year in their home.

Construction Permit

Finally, despite requests for a copy of the construction permit for C&H waste storage ponds as required by Reg. 6.202, no construction permit has been produced. Arkansas law provides that the ADEQ must "require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof." A.C.A. § 8-4-201(a)(4). C&H is a waste "disposal system" that directly or indirectly discharges animal sewage into the waters of the state. A.C.A. § 8-4-102. Regulation 6, which contains Arkansas NPDES regulations governing the permitting of C&H, requires a state construction permit for operation of wastewater facilities. Reg. 6.202(A). ADEQ must approve the application, and a permit must be issued and effective before the activity applied for can begin. Reg. 6.202(A). The state permit is separate from the NPDES permit. Reg. 6.202(B). C&H submitted a Form 1 which stated that it was seeking a construction permit. It submitted its treatment system plans stamped by an engineer as required by Regulation 6. However, ADEQ has not provided an actual construction permit in response to FOIA requests; instead, a copy of the C&H plans and links to the NPDES permit have been provided. The

NPDES permit authorizes discharges, not construction. Additionally, no notice of C&H's application for a construction permit was published in a Newton County newspaper as required under Regulation 8.205; likewise, no notice of ADEQ's decision on the construction permit was noticed as required by Regulation 8.207 (the definition of "permitting decisions" under Regulation 8.103(BB) specifically includes construction permits). ADEQ must also show that the ponds and clay liners were constructed in accordance with the engineer's approved plans, and inspected by the ADEQ for compliance with those plans and appropriate standards. The September 2013 inspection report posted on ADEQ's website show rocks interblended into the clay liner which raise questions about the adequacy of the existing clay liner.

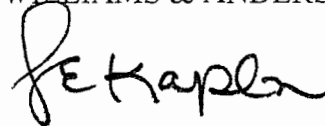
Conclusion

In its responses to these requests to revoke, suspend, or reopen the C&H Permit, the ADEQ has not clearly and unequivocally refused to reopen the C&H Permit and examine the problems raised by our clients and others. The purpose of this letter is to restate and reassert the bases set forth in Exhibits A-F and to request that the ADEQ make a final decision to either reopen the permit and hold a hearing, or refuse to reopen the permit and hold a hearing. Each of these communications and the additional evidence submitted with this complaint set forth several grounds for reopening and reevaluating the C&H Permit. The ADEQ has a duty pursuant to Ark. Code Ann. § 8-4-204 and Part 6 of the ARG590000 General Conditions to revoke, modify, or suspend, in whole or in part, for cause, any permit issued under the Arkansas Water and Air Pollution Control Act. Our clients are prepared to show that there have been violations of the Permit, that it was obtained through misrepresentation and failure to disclose all relevant facts, and that it continues to pose a danger to human health and the environment. Its continued operation is a threat to neighboring residents, property and business owners in its vicinity, students of the nearby Mount Judea school, and the more than 1.3 million people who visit the Buffalo National River each year.

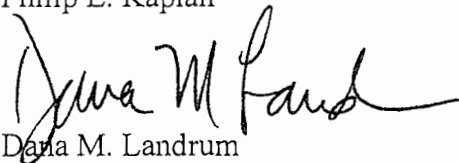
We look forward to the ADEQ's response.

Sincerely,

WILLIAMS & ANDERSON PLC



Philip E. Kaplan



Dana M. Landrum

Encl.

