

From: [Gene Dunaway](#)  
To: [Water Draft Permit Comments](#)  
Subject: C & H Hogfarms, Inc. Application for Modified Permit  
Date: Monday, March 24, 2014 3:32:55 PM

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Thank you as always for the opportunity to comment.

I make the following comment on the modification application and assert it applies to the original permit as well. The original permit is void as a matter of fact and law.

The applicant for the original and modified permit is C & H Hogfarm. I assume you mean C & H Hogfarms, Inc. There is a company with such a name in Arkansas. [http://www.sos.arkansas.gov/corps/search\\_corps.php?DETAIL=384513&corp\\_type\\_id=&corp\\_name=hog+farm&agent\\_search=&agent\\_city=&agent\\_state=AR&filing\\_number=&cmd=](http://www.sos.arkansas.gov/corps/search_corps.php?DETAIL=384513&corp_type_id=&corp_name=hog+farm&agent_search=&agent_city=&agent_state=AR&filing_number=&cmd=)

It is unclear who applied for the original permit and this modification and to whom the original permit was issued and who is applying for this modification. I can't determine whether the applicant for the modification is:

- A fictitious name of someone or some entity dba C & H Hogfarm,
- C & H Hogfarms
- Jason Hensen
- The corporation C & H Hogfarms, Inc

For the purposes of my comment, I assume it is the later.

Under the US Supreme Court Case, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), commonly known as "Citizens United", C & H Hogfarms, Inc. is a separate "person" and distinguishable as such from the human person, Jason Hensen, as a matter of fact and law.

From reviewing the original permit application, it appears the **person** who was granted permission to dump waste on people's land is the human, Jason Hensen. The landowners gave permission to **Jason Hensen** to apply waste to their land, but I find no evidence that C & H Hogfarms, Inc. was given permission by any landowners to apply waste to their fields. The distinction between the corporation and a person is not some minor technical detail.

To state the obvious, one person is not liable for the debts of another and each landowner would need to know the person they are actually dealing with in order to make informed consent as to the reliability, capabilities and the financial condition of the person should their be a damages to their property. The landowners are entitled to know who is actually going to be responsible for applying the waste. The fact that a corporation and not an individual is responsible is also pertinent information as corporations limit the liability of their stockholders and protect their assets from judgments for negligence.

From the agencies perspective, you cannot issue a permit to C & H Hogfarms, Inc. to apply waste to land when C & H Hogfarms, Inc. has no permission from the landowners to do so any more than you could give **me** permission to apply waste to their land when they gave Jason Hensen permission to do so. The original permit is therefore void as a matter of fact and law and a void permit cannot be modified.

Whoever it is that wants a permit to operate a hog farm in this location needs to file a new application and get permission to spread waste from the landowners.

It is also my understanding that even filing a NOI requires notice to surrounding landowners. Has this occurred? What was the response of land owners?

Applying waste by truck should not be allowed. Applying waste by truck is a different process than leach lines which are under the ground. Surface water can run off faster than leach lines and does not break down waste product like deep soil, which is alive with microorganisms. All water or waste should be processed through a package plant or some other process that produces good quality water.

Before allowing this modification you should examine the specific application sites to determine if there are any sink holes or other areas where surface water could enter ground water. I understand the Boone formation is almost all limestone and is one of the worst areas in the state to locate such a treatment plant.

Also, you should check the chemistry of the material the permittee plans to apply and compare it with known issues from antibiotics, growth hormones and other feed additives that are fed to hogs.

Applying waste by trucks is not practical because there are many times when trucks cannot effectively be used on pasture land, especially during periods of intense rain when trucks will get stuck and cause pasture land to become deeply rutted, causing erosion and runoff. What will happen if the ground is covered with ice for a week or so as we have seen this winter? What will happen if it rains at historically unprecedented times and amounts? I understand some of the truck routes will take over an hour round trip to the most distant fields. Is that correct? Is it practical or does this just look good in theory?

Have you built climate change into your modeling? The National Wildlife Association flew me to Washington a few years back to discuss this issue with federal agencies and national water conservation groups. It was an eye opener for me.

Agencies all acknowledged their "plans" based on historical climate data were worthless It became obvious that planning and permit conditions could not be based on models from a weather world that no long exists. The scenarios that predict future climate conditions are much better than we had only a few years ago. Are these permits based on the best information for what has happened in the past, what is happening now or what is most likely to happen in the future? Have you applied the "precautionary principle" which is an acceptable scientific risk assessment principle in evaluating uncertain outcomes under

novel conditions. I assume we can agree that the climate on the planet is changing and will continue to change for many years and this is going to cause variances at the extremes. Have you built these assumptions into your permitting model? How? What conclusions have you reached?

I understand you only want comments on this narrow permit modification involving Vacuum Trucks on some fields but I do want to respectfully point out that the Director of ADEQ has broad and general powers as well.

Ark. Code 8-1-202 Powers of the Director of the Arkansas Department of Environmental Quality (Arkansas Code (2012 Edition))

(a) The executive head of the Arkansas Department of Environmental Quality shall be the Director of the Arkansas Department of Environmental Quality, who shall be appointed by the Governor with the consent of the Senate. The director shall serve at the pleasure of the Governor.

(b) (1) The director shall be the executive officer and active administrator of all pollution control activities in the state.

(2) As such, the director's duties shall include:

(A) (i) The administration of permitting, licensing, certification, and grants programs deemed necessary to protect the environmental integrity of the state.

(ii) The director, or his or her delegatee within his or her staff, shall serve as the issuing authority for the state;

(B) (i) Initiation and settlement of civil or administrative enforcement actions to compel compliance with laws, orders, and regulations charged to the responsibility of the department. (other sections follow)

Of course these laws and regulations should be applied fairly, but that does not diminish her primary responsibility as head of a specific agency to act decisively **in a manner that protects the water, land and air of the State.**

The environmental integrity of our state is at risk. These powers should be executed immediately by a denial of this permit modification and her public expression of her support of the appropriate process to revoke the existing general permit.

Respectfully,  
Gene Dunaway

#### **Public Notice of Public Hearing**

**ARG590001 AFIN 51-00164**

**C & H Hog Farm**

This is to give notice that the Arkansas Department of Environmental Quality (ADEQ) Water Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317 at telephone number [\(501\) 682-0650](tel:501-682-0650), is holding a public hearing for the proposed draft modification of the coverage for the following applicant for which a Notice of Intent (NOI) and revised Nutrient Management Plan (NMP) were received on 2/11/2014 under Concentrated Animal Feeding Operation General Permit, ARG590000. The NMP is being modified to allow land application via Vac Tanker method on Fields 7-9.

Applicant: C & H Hog Farm. Location: HC 72 Box 10, Mount Judea, AR 72655; Latitude: 35° 55' 13.6" N Longitude: 93° 4' 51.0" W in Newton County.

This is a modified draft permit and only the modified portion of the permit is open for comment. The modified portion includes:

- Allowing land application via Vac Tanker method on Fields 7-9.

The public notice of the Nutrient Management Plan and NOI will be available at the Department's website at the following web address on 2/19/2014, the starting date of the public comment period:

[http://www.adeq.state.ar.us/water/branch\\_permits/general\\_permits/generalpermitspn/arg590000\\_generalpermitspn.aspx](http://www.adeq.state.ar.us/water/branch_permits/general_permits/generalpermitspn/arg590000_generalpermitspn.aspx)

The public comment period will begin on 2/19/2014, and will end on 3/24/2014 at 4:30 p.m. Central Time.

A public hearing will be held on 3/24/2014 beginning at 6:00 p.m. Central Time at the Jasper School District Cafetorium, 600 School Street, in Jasper, AR in Newton County. Enter the school building at the clock tower. In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

Comments and public hearing procedures may be found at APC&EC Regulation No. 8, Administrative Procedures. All persons who wish to comment on ADEQ's draft permitting decision must submit written comments to ADEQ, along with their name and mailing address. ADEQ will notify each person who has submitted written comments and/or requested notice of the final permitting decision. Any interested person who has submitted comments may appeal a final decision by ADEQ in accordance with Regulation No. 8. After the public comment period and public hearing, ADEQ will issue a final permitting decision.

ADEQ's contact for submitting written comments, requesting information regarding the NMP and NOI, is the Permits Branch of ADEQ, at the above address and telephone number or by email at [Water-Draft-Permit-Comment@adeq.state.ar.us](mailto:Water-Draft-Permit-Comment@adeq.state.ar.us).

Published February 19, 2014

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