

**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**

**PETITIONERS' RESPONSIVE SUMMARY**

**INTRODUCTION**

The public comment record for Docket No. 14-002-R contains 2,298 comments pertaining to changes to Arkansas Pollution Control and Ecology Commission Regulation 5, entitled Liquid Animal Waste Management Systems (“Reg. 5”). 2,069 (90.03%) comments favor this regulation change. 9 (.39%) comments are neutral or unclear as to their position regarding the regulation change. 220 (9.57%) comments oppose the rulemaking. Exhibit 1 to this summary contains the names of each commenter and a tally of the comments.

This rulemaking closely relates to Docket No. 14-003-R, which amends Arkansas Pollution Control and Ecology Commission Regulation 6, entitled Regulations for State Administration of the National Pollution Discharge Elimination System (“Reg. 6”). Both rulemakings prohibit swine operations housing either 750 swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds. The dual rulemakings are necessary to capture permit applications submitted pursuant to parallel state (Reg. 5) or federal (Reg. 6) permitting schemes.

The first two categories in the Response to Comments section below summarize general comments for and against the rulemaking. General comments are those which petitioners observed repeatedly. The next three groups address individual comments for, neutral, and against the rulemaking. Petitioners selected individual comments for response based on depth or uniqueness.

Petitioners conclude that the greater weight of the scientific evidence in the public comment record supports this rulemaking. Limiting the size of swine operations in the Buffalo River watershed protects water quality and the environment.

## DEFINITIONS

The following definitions apply to the Response to Comments Below:

“ADEQ”-Arkansas Department of Environmental Quality.

“Commission”-The Arkansas Pollution Control and Ecology Commission.

“CAFO”-A Concentrated Animal Feeding Operation subject to, and permitted by, Reg. 6 and the National Pollution Discharge Elimination System.

“Confined Swine Operation”-A facility which is subject to Reg. 5, and which houses either 750 swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds.

“EPA”-Environmental Protection Agency.

“Petitioners”-The Ozark Society and the Arkansas Public Policy Panel.

“SRAP”-Socially Responsible Agriculture Project.

## NOTES

Most commenters do not distinguish between “Confined Animal Operations” regulated by Reg. 5, and CAFOs subject to Reg. 6. For the purposes of this Responsive Summary, petitioners assume that a commenter is referring to both permitting schemes, unless specifically stated otherwise. ADEQ takes a similar approach in categorizing comments. The public comment record compiled by ADEQ for this rulemaking, Docket No. 14-002-R, and the related proposed changes to Reg. 6 found in Docket No. 14-003-R, are identical.

ADEQ received 31 comments which were either the second, third, or fourth comment received from that individual. Where a commenter submitted more than one comment, number corresponding to the order in which ADEQ received the comment distinguishes the multiple comments. For example, in the text below, Robert Cross’ first comment is denoted by a (1st) following his name, whereas a (3rd) follows references to his third comment.

## RESPONSE TO COMMENTS

### General Comments in Favor

1. *Karst topography is not suitable for large swine operations. Leakage from waste holding ponds into groundwater, and transport of pollution and contaminants via groundwater, through karst topography, pose threats to the Buffalo River's water quality and those who use it.*

Petitioners agree that Karst topography in the Buffalo River watershed allows rapid transport of land applied and lagoon-stored hog waste. Reports and comments received by ADEQ from Marti Olesen, Chuck Bitting, Robert Cross (2<sup>nd</sup>)/John Van Brahana, and SRAP state that Karst topography is not a suitable setting for the size of Confined Swine Operations this rulemaking prohibits.

2. *As our Nation's first National River, the Buffalo deserves heightened protection now, and for future generations.*

Petitioners concur. The Buffalo National River is an extraordinary resource which warrants heightened protection. Many commenters expressed their desire to maintain or improve the Buffalo's water quality. The proposed rule is consistent with, and furthers, the purpose of state and federal laws and regulations governing the Buffalo River, as Ross Noland (2<sup>nd</sup>) states.

3. *Water pollution and the smell of large swine operations harm tourism in the Buffalo River watershed. Tourism is an important economic driver for the residents of the Buffalo River Watershed, and the state of Arkansas.*

Many commenters note that the rulemaking protects the tourism economy, which accounts for approximately \$43 million in direct spending every year in the Buffalo River watershed. The Arkansas Department of Parks and Tourism submits a comment noting the economic impact of tourism in this state. Commenter Jim Metzger discusses the possible negative economic impact of reduced tourism in the Buffalo River watershed resulting from large swine operations.

4. *Air pollution, including ammonia, hydrogen sulfide, and nitrous oxide, are toxic to human health, especially the young. Methane is a potent greenhouse gas. Limiting the size and location of large swine operations protects public health and children.*

The comments of Ginny Masullo (2<sup>nd</sup>), Wes Norton (1<sup>st</sup>), Ross Noland (1<sup>st</sup>), John Whiteside, and SRAP each address the harmful air emissions produced by the land application and lagoon storage of large amounts of hog waste. Petitioners concur that the proposed rule will protect the air quality of the Buffalo River watershed from many of the harms noted in these comments.

5. *Harmful bacteria and parasites from large hog farms can be spread by air or water as a result of land applying manure.*

Petitioners agree that land application of millions of gallons of untreated manure from Confined Swine Operations is incompatible with contact-based recreation in the Buffalo River watershed. Several commenters discuss harm caused by water borne pathogens, including SRAP, Wes Norton (1<sup>st</sup>), John Whiteside, Robert Cross (1<sup>st</sup>). This rule protects residents and recreational users of the Buffalo River from harmful bacteria and parasites harbored in swine waste.

6. *Heavy rainfall and floods pose an unacceptable risk of a catastrophic failure of a swine waste storage lagoon. Events in places such as North Carolina which resulted in millions of gallons of manure flowing into the New River, and millions of resulting dead fish and closed coastal areas, should serve as a warning of the catastrophic impacts than can result from intensive swine farming and manure storage in lagoons.*

The proposed rule reduces the threat lagoon storage of hog waste poses to the Buffalo River. Anna Weeks' comment provides examples of lagoon storage failures. Such a failure would devastate water quality. Several commenters, including Mike Quearry, note that the Buffalo River watershed's steep tributaries are prone to flash floods which can destroy a waste storage lagoon.

7. *The Commission and/or the Department failed to do its job in permitting C & H Hog Farm.*

This rulemaking does not pertain to the permitting of C & H Hog Farm.

8. *The Department should order C & H Hog Farm to cease operations to prevent harm to the Buffalo River.*

This rulemaking does not pertain to the permitting of C & H Hog Farm

9. *ADEQ received 1708 comments from members of the National Parks Conservation Association which state the following:*

*I am writing in support of the proposed changes to Regulation 5 and 6, submitted to the APC&EC commission on April 21, 2014 by The Ozark Society and the Arkansas Public Policy Panel. Specifically in Regulation 5, Liquid Animal Waste Management Systems, I support the watershed-specific regulation that prohibits the Director of ADEQ from issuing any new permits to Medium and Large confined animal operations (CAOs) or concentrated animal feeding operations (CAFOs) in the Buffalo National River Watershed. I also support the proposed changes to Regulation 6, Regulations for State Administration for the National Pollutant Discharge Elimination System (NPDES) noting that the Director shall not issue a permit of coverage pursuant to Regulation 6 for new medium or large CAO or CAFOs in the Buffalo River National Watershed. While I understand that these changes will not impact the current CAFO in the watershed, it is my hope that Governor Beebe, ADEQ, and Cargill will relocate the C&H facility and that it will no longer endanger the Buffalo National River Watershed. Thank you for the opportunity to comment on this rulemaking.*

Petitioners highlight this comment due to the volume received. This rulemaking does not pertain to the permitting of C & H Hog Farm.

#### General Comments Against

10. *Regulations changes should be science based and reasonable. This change is a drastic measure without science to back it up.*

The record does not support this comment. The comments, records, and reports in the public comment record show that restricting the size of Confined Swine Operations protects water quality

and the environment in the Buffalo River watershed. The record is devoid of any science-based studies showing that lagoon storage and land application of millions of gallons of untreated hog waste from facilities the size of those prohibited by this rulemaking does not impact high quality streams above karst topography of the type found in the Buffalo River watershed.

11. *The regulations changes are driven by fear and emotion.*

Petitioners disagree. This comment is subjective in nature, and does not comport with the weight of the evidence and comments in the public comment record.

12. *The Commission should delay considering this rulemaking until the state-funded Big Creek Research team led by Dr. Sharpley concludes its work.*

Petitioners disagree. The weight of the evidence in the public comment record shows that the lagoon storage and land application of swine wastes from Confined Swine Operations negatively impacts water quality. No delay is needed to determine what one such operation's impact is. Furthermore, the purpose of this rule is not to alter operations at existing facilities, but rather to prohibit future facilities of a certain size to prevent cumulative impacts.

13. *Please consider the benefits and stewardship of Arkansas farmers before you react to misinformation in the public arena.*

Petitioners agree that Arkansas farmers are stewards of their land. However, this rulemaking prohibits a very narrow, defined form of farming in a watershed deserving of heightened protection from the land application and lagoon storage of hog waste from Confined Swine Operations. The commenters identify no alleged misinformation.

14. *I am concerned about the right to farm.*

This rulemaking is a narrow restriction on a specific, non-existing use of property. This regulation does not impact existing farms.

15. *Ditch third-party rulemaking as an option. If hard decisions need to be made, they need to be made by ADEQ, this Commission and/or the duly elected members of the Arkansas General Assembly.*

Ark. Code Ann. § 8-4-202, passed by the General Assembly, authorizes rulemaking by third-party petitioners. The Commission makes the final determination regarding whether or not to pass this rule. Petitioners are within the law in requesting this rulemaking.

16. *As a group that embraces science at the core of its everyday function - to protect the water-quality and environmental resources of the state of Arkansas - it is amazing to me that the commissioners of the PC&E are allowing a third-party rulemaking proposal that is devoid of science to be considered for approval. How can you turn your back on science at the time it is most needed?*

The greater weight of the scientific evidence submitted in support of this rulemaking shows that restrictions on the size of Confined Swine Operations protects water quality in the Buffalo River watershed.

17. *If the EPA, sent in to find something wrong on this hog farm, walks away saying there are no violations, then why would the PC&E Commission overreact to some group of environmental extremists who just know something terrible is happening on that farm? Why, I ask again?*

This rulemaking does not pertain to the permitting of C & H Hog Farm.

18. *The scrutiny and research afforded C & H Hog Farm is the most extensive in the nation.*

This rulemaking does not pertain to the permitting of C & H Hog Farm.

19. *The proponents of this Third party Rulemaking go on and on about the threat of the waste handling storage lagoons leaking and the catastrophic failure. In Arkansas's long history of swine production we have NEVER had a catastrophic failure. The mid 1990's studies done of hog farms in the Buffalo River watershed showed that these lagoons had minimal to no impact on groundwater. Not because of the formation underlying them as some have claimed, but because they did not leak. These farms were constructed in the 1970's. Today's farms are constructed using much more stringent engineering design standards. If the ongoing research on C and H shows current regulatory requirements is not adequate, then the regulations can be modified to include additional permit requirements. This is a scientific approach.*

Petitioners disagree with the commenters' characterization of the 1990's studies, though not attached or specifically referenced by these comments, petitioners assume commenters are referring to Formica, S.J., *Using Data, Communication & Education to Improve Swine Waste Management in the Buffalo River Watershed*, and Van Eps, M.A., *Survey of Arkansas Swine Liquid Waste Systems*, both of which are found in the record. Those studies showed that it is possible to reduce environmental impacts through improving waste management practices. However, it is unclear what, if any, bearing those studies have on the rulemaking at hand. The *Formica* report states the following regarding the farms in that study:

The number of sows at these facilities ranged from 250 to 500. During the course of the project, several watershed swine farmers converted to a farrow-to-wean operations in which 10 lb weaned pigs were shipped to a separate nursery operation. Subsequently, the number of sows increased to 300 to 550 per facility.

The Van Eps study states:

Farm #5 and Farm #7, are 300 sow-pig farrowing operations, housing approximately 300 sows, each weighing 147 kg. Every two weeks, 250 weaner pigs each weighing 4.5 kg, are removed from the farms.

This rule prohibits swine operations with 750 or more swine weighing 55 pounds or more, or facilities with 3000 or more swine weighing less than 55 pounds. It appears that the 1990s studies do not involve facilities of the size this rulemaking prohibits. Furthermore, this rulemaking does not pertain to C & H Hog Farm. Petitioners reference and incorporate the comment of Robert Cross (3<sup>rd</sup>), which addresses the contention that the 1990s studies demonstrate anything beyond the findings that proper land application practices can reduce nutrient loading.

20. *I do not understand the concern about a small number of hogs being permitted five miles from the river when an estimated one and a half million people visit the river each year. The Park service applies more nutrients on fields that are next to the river, than C & H Hog Farms does under a permit on land that is over five miles from the river.*

The Commission and ADEQ do not regulate the volume of recreational use in the Buffalo National River, nor do they manage the Park Service's hay fields. Furthermore, this rulemaking does not pertain to C & H Hog Farm.

#### Response to Individual Comments for the Rule

21. *Marti Olesen comments that the rule change is appropriate due to the karst topography present in the Buffalo River Watershed, and suggests that heightened protections are appropriate in Arkansas karst areas, as evidenced by Regulation 22's restrictions on landfills above karst topography.*

Petitioners agree that Regulation 22 is a relevant example of the Commission previously demonstrating the need to provide heightened protections in karst topography.

22. *Charles Bitting states that he has assisted with many dye tests in the Buffalo River Watershed, and that groundwater does not necessarily follow surface topography. He also states that he assisted ADEQ staff in surveying weirs for the swine CAFO study in the early 1990s, and*

*observed dead zones downhill of waste lagoons. Mr. Bitting also notes that limestone and dolomite are exposed at the surface in more than half of the Buffalo's watershed, creating serious concerns for the placement of lagoon storage due to the rapid transport of water in karst topography.*

Mr. Bitting's personal observations and experience are important first-hand accounts of the nature of karst topography, and the need for this rulemaking.

23. *James Metzger, an economist, states that economic analyses of large swine operations do not assess environmental costs that accompany large swine operations. He supports the rulemaking in order to protect the economic multiplier effect of tourism spending, and the integrity of the rural communities in the watershed.*

Petitioners agree that the negative externalities of large swine operations in the Buffalo River watershed outweigh any benefit to local communities.

24. *Ginny Masullo (2<sup>nd</sup>) submits the American Public Health Association's statement on CAFOs which requests that governmental agencies impose a moratorium on new CAFOs until additional scientific studies on health impacts are developed.*

Petitioners state that the rulemaking will protect public health in the Buffalo River watershed from the threats discussed in the American Public Health Association statement.

25. *Anna Weeks submits case studies from Iowa, Illinois, Minnesota, North Carolina, Oklahoma, Pennsylvania, and Wisconsin of severe environmental degradation caused by waste storage lagoon failures and overflows.*

Petitioners agree that the rulemaking reduces the risk of swine waste lagoon overflows in a manner consistent with Arkansas's water quality standards, and other protections.

26. *John Whiteside comments that the rule change will protect community health, especially children and the elderly, from particulate, gas, and vapors such as ammonia and hydrogen sulfide, which can cause severe illness in human populations.*

Petitioners agree that the rulemaking protects public and environmental health of both residents and visitors in the Buffalo River watershed.

27. *Robert Cross (1<sup>st</sup>) submits an in depth comment with supporting scientific documents demonstrating why the rulemaking will protect water quality in the Buffalo River watershed. His comments are summarized as follows:*

- a) *Hog waste contains components which degrade water quality, including phosphorus, nitrogen, pathogens, and hormones.*
- b) *Untreated swine waste has known paths to from farms to surface water, including leakage from storage lagoons, and land application.*
- c) *The likelihood of contamination is high from a CAFO in the Buffalo River watershed due to leakage through clay liner in ponds, spray fields, severe rainstorms, flooding, equipment failures, and drainage ditches causing discharges.*
- d) *The threats to water quality expand exponentially with the number of CAFOs in a watershed. Swine produce incredible amounts of waste, which under current rules, is land applied in an untreated form.*

Petitioners agree with each of Mr. Cross's comments in support of the rulemaking.

28. *Robert Cross (2<sup>nd</sup>) and Dr. John Van Brahana submit a detailed comment with supporting evidence to show that karst topography poses significant challenges for the lagoon storage and land application of swine wastes in the Buffalo River watershed. The theme of those comments is as follows:*

- a) *Karst topography is prevalent throughout the Buffalo River watershed. Commenter Brahana has extensively studied the topography of the Mt. Judea area, and found that it is typical of karst formations in that surface and groundwater interact easily, and groundwater flow is rapid, and dispersive.*
- b) *Swine CAFOs present particular problems in karst topography such as pathogen transport and nutrient transport.*
- c) *Brahana has conducted dye tests in the Mt. Judea valley, and found interconnections between wells, springs, and groundwater, and the Buffalo River, in the absence of attenuation of waste components. This leads to a conclusion that the risk to the Buffalo from large swine operations is extremely high.*
- d) *Cross and Brahana also note that the Pindall, Arkansas landfill study near the Buffalo River in the late 1980s also showed that rapid transport of water, and potentially pollutants, from surface to ground is present near the Buffalo, as characterized by its karst topography.*

Petitioners agree that the karst topography of the Buffalo River watershed is not suitable for Confined Swine Operations. The rulemaking will restrict the size, and thus the amount of waste produced, by Confined Swine Operations in the Buffalo River watershed.

29. *Robert Cross (3<sup>rd</sup>) specifically addresses oral comments made on June 17<sup>th</sup> that certain studies show that modern clay waste lagoon liners do not leak. Mr. Cross takes issue with this assertion, noting that the 1990s studies relied on by the commenter contained no data regarding pond leakage, evaporation, or rainfall.*

Petitioners agree with the comments of Robert Cross (3<sup>rd</sup>).

30. *Comment of Ross Noland (1<sup>st</sup>), and attached studies and reports, support the rule change to limit the size and location of large swine operations to protect public and environmental health, including drinking water supplies, air quality, and preventing public exposure to pathogens, in the Buffalo River watershed.*

Petitioners agree that limiting the size of Confined Swine Operations in the Buffalo River watershed protects public and environmental health.

31. *Ross Noland (2<sup>nd</sup>) states that the rulemaking is within the Commission's powers, and is consistent with Arkansas's water quality standards, including water quality criteria, antidegradation policy, and the Buffalo's designation as an Extraordinary Resource Water. The comment also provides examples of other states which have regulated CAFOs above karst topography, and reviews federal management designations within the Buffalo River Watershed.*

Petitioners agree with the comments of Ross Noland (2<sup>nd</sup>). The Buffalo National River is deserving of the highest protection under both state and federal law.

32. *SRAP submitted an extensive comment, with supporting documentation, covering several unique topics including:*

- a) *ADEQ has the authority and duty to prevent water and air pollution.*
- b) *CAFOs threaten the environment and public health by generating a staggering amount of manure which contains potential toxins. Contaminants are discharged, leak, or run off into surface and groundwaters, resulting in pollutants in water that threaten public health.*
- c) *Streams in the BNR Watershed are listed as impaired waterbodies.*
- d) *CAFO air emissions threaten public health.*

Petitioners appreciate and agree with the well-researched and documented SRAP comments.

Response to Individual Neutral Comments

33. *ADEQ suggests adding a definition for “Animal Feeding Operation” and “Concentrated Animal Feeding Operation” to Regulation 6.*

This comment does not impact petitioners’ Reg. 5 changes. Petitioners do not believe the suggested changes to Regulation 6 are necessary because Regulation 6 incorporates the federal definitions of “Animal Feeding Operation” and “Concentrated Animal Feeding Operation” by reference. Reg. 6.103(A) adopts the definitions found in 40 C.F.R. § 122.2, which states that 40 C.F.R. § 122.23 defines “Animal Feeding Operation” and “Concentrated Animal Feeding Operation.” Reg. 6.104(A)(3) incorporates 40 C.F.R. § 122.23 verbatim. 40 C.F.R. § 122.23 contains the same definitions of “Animal Feeding Operation” and “Concentrated Animal Feeding Operation” now suggested by ADEQ. It does not appear to be ADEQ’s practice to both incorporate terms and then define those terms. To do so would be repetitive.

34. *Forest Boles states that he cannot support or oppose the rulemaking because he does not know the scientific basis for the moratorium on swine operations of 750 or more hogs which weigh greater than 55 pounds or 3,000 or more swine weighing less than 55 pounds.*

The rulemaking and Docket No. 14-003-R propose a prohibition on further swine operations in the Buffalo River Watershed which house 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds. The petitioners drew these numbers from the definitions of medium and large swine concentrated animal feeding operations found in federal regulations. 40 C.F.R. § 122.23(b)(4)(iv-v) and (b)(6)(i)(D-E). The Commission has adopted the same definition in past rulemakings. *See* Reg. 6.103(A)(adopting federal definitions) and Reg. 5.201.

The history of the medium and large swine thresholds begins with EPA's 1973 animal confinement regulations for feedlots, which imposed regulations on facilities with 2,500 or more swine over 55 pounds, for the stated reason that this threshold "will cover the facilities which present the greatest potential for pollution control while limiting the number of applications to a manageable quantity." 38 Fed. Reg. 18,000. 1976 regulation changes retained the 1973 numbers because they were "justified by studies and data." 41 Fed. Reg. 11,458. The 1976 regulations also introduced regulation of medium CAFOs with 750 or more swine weighing over 55 pounds. *Id.* at 11,460.

The definitions of medium and large CAFOs remained static until 2003 changes to the CAFO regulations introduced regulation of swine under 55 pounds. EPA stated that a new definition was necessary due to changes in the industry, because "immature swine were not a concern in the past because they were usually a part of operations that included mature animals...in recent years, these swine operations have become increasingly specialized, increasing the number of large, separate nurseries where only immature swine are raised." 68 Fed. Reg. 7,176, 7,192. EPA supported its regulatory CAFO thresholds with a Technical Development Document which analyzed manure production.

This rulemaking restricts Confined Swine Operations of the same size as those qualifying as medium or large swine CAFOs under federal regulations and Reg. 6. Utilizing known definitions and thresholds across both the state (Reg. 5) and federal (Reg. 6) permitting schemes for swine operations in Arkansas promotes consistency and certainty. The rulemakings do not target small farmers which do not house swine in numbers which meet the medium or large swine CAFO thresholds. Over forty years of regulatory implementation, definition, research, and rulemaking support the threshold numbers.

## Response to Individual Comments Against the Rule

35. *Susan Anglin (3<sup>rd</sup>) suggests that a multiyear study to evaluate impacts of recreation on the Buffalo River, and a potential lottery permitting system for recreational users, is appropriate to protect the Buffalo River.*

The suggestions Ms. Anglin offers are beyond the management powers of ADEQ and the Commission. The National Park Service is developing a new General Management Plan for the Buffalo National River which will address a myriad of matters relating to the Buffalo River, including recreational use and protection of water quality.

36. *Warren Campbell, Newton County Judge, opposes the regulation changes because he believes that current regulations on farms are sufficient, and the Newton County economy is under severe strain.*

The rule change will not place additional regulations on existing farms. It only prohibits future Confined Swine Operations. Furthermore, the rule change will protect the tourism economy of Newton County.

37. *Commenter Jason Henson set forth multiple questions pertaining to many subjects. The following is a summary of those points which are not addressed by the responses to comments above:*

- a) *Does this Commission support use of the Arkansas Phosphorus Index?*
- b) *What scientific data did the Commission use to initiate rulemaking to prohibit only swine CAFOs, and not other forms of CAFOs? Why is the Commission targeting medium and large swine CAFOs which are already heavily regulated?*
- c) *Does this rulemaking impact CAFOs which utilize waste management practices other than liquid animal waste management?*

- d) *What alternatives has the Commission considered?*
- e) *When did it become okay in Arkansas for environmental extremists or a state agency to dictate to farmers what types of animals they may raise, and the size of their operation?  
When did it become okay in Arkansas for rules to be made simply because environmental extremists and urban elitists think they deserve the right to make this area their personal playground and dictate to the rest of us who live here what we can and cannot do?*

Mr. Henson's questions are directed at the Commission, but raise several issues which petitioners can respond to. First, in regards to the actions requested of the Commission, including review of the Arkansas Phosphorus index, relevant CAFO data, and alternatives, petitioners state that the public comment period and subsequent Commission review are the appropriate format for the Commission to consider and review such topics. Though the record and individual comment are devoid of information regarding the Arkansas Phosphorus Index, petitioners acknowledge that it is a tool for informing decisions made in nutrient management plans. The index does not address concerns pertaining pathogens, lagoon spills, floods, and the unique challenges posed by karst topography. The public comment record is populated with information demonstrating that the greater weight of the evidence shows that a prohibition on Confined Swine Operations in the Buffalo River watershed protects water quality and the environment. The Commission may consider this data and any alternatives found in the record before making a final decision.

Second, this rulemaking prohibits Confined Swine Operations, and not other forms of animal agriculture, because the greater weight of the evidence shows that such operations pose the greatest threat to the Buffalo River's water quality. Petitioners do not seek to prohibit, for example, a horse operation of 150 animals which qualifies as a Reg. 5 Confined Animal Operation or a CAFO, because there is no evidence that such operations now pose a threat to the Buffalo River's

water quality. Petitioner's rulemaking is purposefully narrow and defined in order to prohibit only those operations which pose the greatest threat. The record shows that Confined Swine Operations pose the greatest threat.

Third, petitioners disagree with Mr. Henson's characterization of this rulemaking as extreme or unheard of within existing regulatory framework. Government bodies regularly their ability to regulate land use in order to comply with laws such as, in this case, Arkansas's water quality standards, the Clean Water Act, and the Arkansas Water and Air Pollution Control Act. This rulemaking properly invokes the Commission's powers.

The remainder of this comments pertains to matters which are not before the Commission in this rulemaking, including management of Park Service properties, inspection of the C & H Hog Farm, and Commission regulation of other watersheds. This rulemaking pertains only to Confined Swine Operations in the Buffalo River watershed.

38. *Jerry Masterson of the Arkansas Pork Producers Association states that C & H Hog Farm followed the law in obtaining its permit, the Commission should base its decision on science, not FEAR-False Evidence Appearing Real, and that the third party rulemakings are an infringement to a farmer's right to farm. Mr. Masterson's comment contains several other points which are addressed above in the general comments.*

Petitioners disagree with Mr. Masterson assertions. Mr. Masterson produces no scientific evidence in support of his comment. The greater weight of the scientific evidence submitted in this public comment period shows that prohibiting large swine operations in the Buffalo River Watershed will protect water quality and public health. This rulemaking is not an infringement on the right to farm, as it is narrowly focused and defined to prohibit only future facilities of a certain type. The Commission is well within its powers of regulating permitting.

39. *Commenter Evan Teague provided a comment with attachments in support of the following points in opposition to the rulemaking:*

- a) *Participants in a 1995-2000 study of swine facilities in in the Buffalo River watershed demonstrated an ability to reduce nutrient loading by as much as 90% with best management practices. Participants in this study received EPA's Environmental Excellence Award of 1998. The farms studied were built in the 1970s. Today's farms, and management plans, are much improved.*
- b) *C & H Hog Farm is integral to the discussion of this rulemaking, especially in light of the fact the Governor has funded the Big Creek Research Team to study surface and groundwater near C & H Hog Farm. This rulemaking will preempt that work. Prohibitions based on potential or threats is not a scientific approach.*
- c) *EPA inspected C & H Hog Farm in April of 2014, and found no violations. Onsite soil samples indicated that soil phosphorus levels below samples used to draft the facility's nutrient management plan. Why would petitioners limit C & H's ability to expand?*
- d) *National Park Service Agriculture Special Use Permits allows land application of fertilizer in many fields near the Buffalo River. The very fact that C & H Hog Farm has located near Mt. Judea and landowners are now applying hog manure (organic liquid fertilizer) instead of commercial fertilizer or poultry litter may actually improve the already high, excellent, even pristine, water quality in Big Creek.*

Petitioners have addressed the 1990's studies of hog farms in the Buffalo River watershed above, but again state here that such studies do not appear to review facilities of the size studied in those reports, and again reference the comment of Robert Cross (3rd). This rulemaking does not pertain to the C & H Hog Farm, nor does one future study of the C & H Hog Farm counter the

greater weight of the evidence submitted during the record of this rulemaking which demonstrates that limiting the size of Confined Swine Operations protects water quality in the Buffalo River watershed. Though one individual farm may be in compliance at this time, such compliance does not eliminate the risk of a catastrophic, waterborne pathogen contamination, air emissions, or other cumulative negative environmental impacts of additional Confined Swine Operations this rulemaking prohibits. Petitioners specifically reject any contention that the presence of Confined Swine Operations, and the resulting necessity of land applying millions of gallons of untreated swine waste, can somehow improve water quality. Such a contention is wholly unsupported by the record which shows that the impacts of large swine operations extend beyond matters pertaining to nutrient loading.

Respectfully Submitted,

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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 15<sup>th</sup> day of October 2014.

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