

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**  
**IN THE MATTER OF THE OZARK SOCIETY AND**  
**THE ARKANSAS PUBLIC POLICY PANEL** **DOCKET NO. 14-003-R**

**AMENDED PETITION TO INITIATE THIRD-PARTY RULEMAKING**  
**TO AMEND REGULATION NO. 6**

Petitioners state the following for their Amended Petition to Initiate Third-Party Rulemaking:

**INTRODUCTION**

1. This amended petition seeks to initiate rulemaking for the purpose of modifying Arkansas Pollution Control and Ecology Commission (the Commission) Regulation No. 6, entitled Regulations for State Administration of the National Pollutant Discharge Elimination System (APCEC Reg. 6).

2. The proposed rule prohibits the Director of the Arkansas Department of Environmental Quality (ADEQ) from issuing new APCEC Reg. 6 permits for medium and large swine concentrated animal feeding operations (swine CAFOs) in the Buffalo National River Watershed.

**PARTIES**

3. Petitioner the Ozark Society is an Arkansas non-profit corporation dedicated to conservation, education, and recreation relating to Arkansas's public lands and resources.

4. Petitioner the Arkansas Public Policy Panel is an Arkansas non-profit corporation which organizes citizens to advocate in the public's interest.

**APPLICABLE LAW**

5. Ark. Code Ann. § 8-4-202(c)(1) and APCEC Reg. 8.809 permit third parties, such as the petitioners herein, the right to petition the Commission to initiate rulemaking.

6. Ark. Code Ann. §§ 8-4-201(b)(1)(A) and 8-4-202(a) grant the Commission power to promulgate the proposed rule sought by petitioners.

### FACTS

7. Congress designated the Buffalo River as the first National River in 1972 “for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving [it] as a free-flowing stream.” 16 U.S.C. § 460m-8.

8. APCEC Reg. 2 affords the Buffalo River its highest category of designated use, “Extraordinary Resource Water,” and Tier III antidegradation protection.

9. The National Park Service estimates that the Buffalo National River attracted more than \$38,232,000.00 in direct visitor spending during 2011.<sup>1</sup>

10. The Buffalo National River is an essential part of Arkansas’s economic, environmental, and cultural fabric.

11. This amended petition requests that the Commission initiate rulemaking to amend its Regulation No. 6 to prohibit the ADEQ Director from issuing any additional permits pursuant to its Regulation No. 6 for the operation of medium and large swine CAFOs within the Buffalo National River Watershed.

12. If adopted, this rule change would not apply retroactively, and thus would not affect existing medium and large swine CAFOs operating in the Buffalo National River Watershed.

13. This amended petition includes a modified Exhibit A which clarifies that a facility within the Buffalo River Watershed with coverage under a Regulation No. 6 general permit may seek renewal, modification or a Regulation No. 5 permit, and that no new facilities may seek

---

<sup>1</sup> *Economic Benefits to Local Communities from National Park Visitation, 2011*, NPS, available at <http://www.nature.nps.gov/socialscience/docs/NPSSystemEstimates2011.pdf>.

coverage under a Regulation No. 6 general permit to operate in the Buffalo National River Watershed. Petitioners have made no other substantive changes.

14. Medium and large swine CAFOs house 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds.

15. Medium and large swine CAFOs produce millions of gallons of waste per year.

16. Wastes from medium and large swine CAFOs is typically stored and land applied on nearby fields.

17. Waste storage lagoons pose a threat of a catastrophic release of liquid waste.

18. Land application possesses the potential to result in nutrient runoff.

19. The Karst topography typical of the Buffalo River Watershed creates the potential for rapid movement of wastes to the subsurface and nearby water bodies.

20. Additional storage and land application of liquid waste from new medium and large swine CAFO facilities permitted pursuant to APCEC Reg. 6 presents a threat to the existing high water quality of the Buffalo National River.

21. Prohibiting future APCEC Reg. 6 permits for medium and large swine CAFOs in the Buffalo National River Watershed will eliminate the threat.

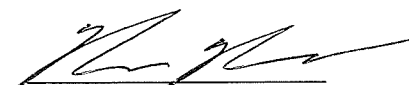
22. Petitioners attach the following documents in support of this request to initiate rulemaking:

- a. Exhibit A: Proposed Changes to APCEC Reg. 6;
- b. Exhibit B: Legislative Questionnaire;
- c. Exhibit C: Financial Impact Statement;
- d. Exhibit D: Economic Impact Statement/Environmental Benefit Analysis; and
- e. Exhibit E: Proposed Minute Order to Initiate Rulemaking.

23. Should the Commission choose to grant this amended petition, petitioners have prepared for the requisite public comment period by coordinating with ADEQ to arrange for publication of legal notice of the rulemaking in the Arkansas Democrat Gazette and the Harrison Daily Times, with a public hearing on June 17, 2014, at 6:00 p.m. in the Durand Conference Center, Room A, at North Arkansas College, 303 N. Main St., Harrison, AR 72601.

WHEREFORE, petitioners request that, pursuant to APCEC Reg. 8.810, the Commission initiate this third-party rulemaking by adopting the Proposed Minute Order.

Respectfully Submitted,


By:   
Samuel E. Ledbetter, #83110  
Ross Noland, #06334  
McMath Woods P.A.  
711 W. Third Street  
Little Rock, AR 72201  
Tel. 501-396-5400  
Fax 501-374-5118

### 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 21<sup>st</sup> day of April 2014.

Teresa Marks  
Director, ADEQ  
5301 Northshore Dr.  
North Little Rock, AR 72118  
marks@adeq.state.ar.us

Tammera Harrelson  
Chief, Legal Division, ADEQ  
5301 Northshore Dr.  
North Little Rock, AR 72118  
harrelson@adeq.state.ar.us

  
Ross Noland