

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF THE OZARK SOCIETY AND
THE ARKANSAS PUBLIC POLICY PANEL

DOCKET NOS. 14-002-R & 14-003-R

RESPONSE TO COMMENTS

The Arkansas Pollution Control and Ecology Commission (hereinafter “APC&EC”) held a public hearing on June 17, 2014 to receive comments on a third-party proposal by the Ozark Society and the Arkansas Public Policy Panel to change APC&EC Regulations 5 and 6, entitled Liquid Animal Waste Management Systems and Regulations for State Administration of the National Pollution Discharge Elimination System, respectively. The public comment period closed on July 1, 2014.

The proposed amendments would prohibit the Arkansas Department of Environmental Quality (hereinafter “ADEQ”) Director from issuing Regulation No. 5 permits for Confined Animal Operations and Regulation No. 6 permits for Concentrated Animal Feeding Operations for facilities in the Buffalo National River Watershed (hereinafter “BNRW”) with either 750 or more swine weighing 55 pounds or more or 3,000 or more swine weighing less than 55 pounds. Approximately two thousand three hundred (2,300) comments from individuals from within the state of Arkansas and nationally were received regarding the proposed amendments. The ratio of comments in support of the proposal versus comments against the proposal is approximately 10:1. A summary of these comments are set out below, as there were several similar issues raised throughout the comments, with the Department’s response following.

Comment #1:

Citizens in support of the proposed changes raised many considerations including, but not limited to, the following:

1. Prevention of water and air pollution;
 - a. Regarding the karst geology of the BNRW and concerns of leakage from waste storage lagoons that could seep into groundwater, drinking water, and ultimately surface waters;
 - b. Impaired streams that currently exist in the BNRW could be impacted;
 - c. Air emissions and odor;

2. Protection of public health;
 - a. Public exposure to water-borne pathogens such as E. coli and fecal coliform bacteria;
 - b. The proximity of a current facility to a grade school;
3. Concern that recreational activities and Arkansas' economy are being threatened; and
4. Other states have initiated similar bans due to negative environmental and ecological impacts.

Response:

The Department acknowledges these comments and recognizes the significance of the Buffalo River as the first National River and as an Extraordinary Resource Water and Natural & Scenic Waterway. The Department further acknowledges that it has an obligation to issue permits for allowable activities in a manner that is protective of waters of the state, wherever located, and believes the current versions of Regulations 5 and 6 address technical issues and permit requirements in a manner that is protective of the environment and public health. Under current versions of the Regulations, the Department utilizes generally accepted and current engineering principles, such as the Arkansas Phosphorus Index (hereinafter "PI"), when developing Nutrient Management Plans (hereinafter "NMPs"), providing guidance on operations management activities such as land application procedures, obnoxious odor management, animal mortality handling, etc., to ensure proper environmentally protective methods are utilized. (For example, permittees may only land apply wastes on fields that rank Medium or Low risk values on the PI scale, while land application is prohibited on sites that are assigned a class label of High or Very High as they are viewed as likely to discharge phosphorus.) The Department employs the PI as an appropriate technical methodology to evaluate land application as an acceptable agricultural practice since the amount of nutrients and manure applied on land application areas are based on soils tests and analysis of the liquids in the holding ponds. Additionally, Regulations 5 and 6 require permittees to comply with numerous conditions to ensure environmentally protective operations, including frequent visual inspections and repair of the waste storage structures, abiding by application rates and upholding buffer zones during land application, records maintenance and regular reporting. Permittees and their facilities also are subject to frequent inspections by the ADEQ Inspection Branch to monitor compliance. To date,

the Department has not received any evidence that the permitted activities in the BNRW endanger human health or the environment.

The Department asserts that, from a technical standpoint, the current versions of Regulations 5 & 6 generally serve to allow for permitting that is protective of the waters of the state. Nonetheless, and without taking a position on this rulemaking, ADEQ asserts that questions addressing whether extra protections should be afforded the Buffalo River, given its extraordinary significance to the citizens of this state and nation, and what additional requirements or restrictions will be applied to permitted activities there, are not technical issues but are policy concerns.

Comment #2:

Citizens against the proposed changes raised many considerations including, but not limited to, the following:

1. No scientific evidence of contamination or environmental threat has been presented;
 - a. The University of Arkansas' Big Creek Research Project should be completed and results analyzed prior to incorporating changes;
2. Current laws and engineering principles such as the Arkansas Phosphorus Index are protective;
3. The threshold is arbitrary as only swine producers of medium and large facilities in the BNRW are affected;
 - a. Small farms and other animal producers in the area are not restricted nor are producers in other areas of the State;
 - b. All sources of pollution in the area should be considered including recreational, industrial, agricultural, and residential; and
4. Farmers' right-to-farm is being threatened.

Response:

The Department acknowledges these comments. As stated in the Response to Comment #1, the Department believes this to be a policy issue, not a technical issue.