



September 16, 2024

To: Arkansas Department of Energy & Environment
Attn: Mr. Peter Alberg, Branch Manager
Energy & Environment | Office of the Chief Counsel
5301 Northshore Drive
North Little Rock, AR 72118
Email: comment@adeq.state.ar.us

From: Arkansas Farm Bureau Federation
Mr. Evan A. Teague, PE, MBA
Vice President, Environmental Issues
P.O. Box 31
Little Rock, AR 72203

Re: APCEC Regulation 6 Rulemaking – Section 6.602

Dear Mr. Alberg:

The Arkansas Farm Bureau Federation welcomes the opportunity to submit comments regarding the proposed amendments to the Arkansas Pollution Control & Ecology Commission's (the Commission) Rule 6, specifically Section 6.602 – Buffalo River Watershed, which would implement a permanent moratorium on issuing swine farm permits in the Buffalo River watershed. We strongly urge the Department and the Commission to strike Section 6.602. As you are aware, this should have been done after the 2020 legislative review process when the ALC – Administrative Rules Committee unanimously voted to disapprove the previous rulemaking attempt. The basis for their disapproval was that a permanent moratorium is not consistent with legislative intent, and, since this disapproval, absolutely nothing has changed in the level of swine based agriculture activity in the region.

Our continued engagement in this issue is based on insistence from our county Farm Bureau members, especially those involved in animal agriculture who live in the impacted area. These farmers believe these proposed changes not only infringe on their right-to-farm and private property rights, but are potentially contrary to existing state statutes, lack scientific justification, are arbitrary and capricious, and do not comport with the "reasonableness clause."

Our policy supports the use of sound science to develop legislative and regulatory policies; however, the proposed revisions to Section 6.602 of Rule 6 are not founded in sound science. Scientific studies performed in the Buffalo River watershed, such as those completed by the Big Creek Research and Extension Team (BCRET), United States Geological Survey (USGS), Buffalo River National Park Service (BRNPS), FTN & Associates (FTN), Harbor Environmental (Harbor), Beautiful Buffalo River Action Committee (BBRAC), and the Department itself over the last decade and even scientific studies performed all the way back in the 1970s, do not support a permanent moratorium on permitting swine farms in the Buffalo River watershed. We

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respectfully request on behalf of our members, especially those who live and work in the counties impacted by these regulatory changes, that you strike the language in Section 6.602.

Long-term monitoring dating back to the mid-1980s shows nitrate concentrations, while still extremely low, have been consistently trending upward. However, over the same time frame the number of animal units associated with production agriculture in the watershed has remained relatively stable and has actually been trending downward since the mid-1990s. Swine numbers peaked in the early-1990s and have precipitously declined since that time. Obviously, something other than agriculture, particularly swine farms, is affecting the perception, albeit unfounded, that there is an impact on the Buffalo River as its water quality remains extremely high.

Comment 1: Why is the Arkansas Department of Energy & Environment (Department) re-initiating rulemaking after the Arkansas Legislative Council denied the request in 2020?

In 2020, the Division sought to make the moratorium permanent, but the Arkansas Legislative Council (ALC) unanimously voted to disapprove the rule. The primary reason was that the Department already has the authority to deny permits on a case-by-case basis, making a permanent moratorium unnecessary. Furthermore, the ALC noted that the denial of C&H Hog Farms' Regulation 5 permit effectively halted operations in the watershed, raising questions about the need for additional regulations. Since the ALC's disapproval, there has been no increase in swine farming in the area to justify revisiting this measure. Given that legislative approval is required for the rule to become final, why has the Commission not removed Section 6.602 following the ALC's vote?

Comment 2: Why is a moratorium necessary when the Department has authority to deny permits on a case-by-case basis?

Arkansas Code §§ 8-4-203 and 8-4-207 require the Department to evaluate permit applications on their individual merits. This ensures that each application is fairly considered, with the opportunity for appeal to the Commission. The proposed moratorium undermines this established process by imposing a blanket restriction, disregarding the unique circumstances of individual applications and violating property owners' rights.

Comment 3: Why does the moratorium now include small hog farms when the original regulations targeted only medium and large farms?

In the current Regulation finalized in 2015, the temporary moratorium applied only to medium and large swine farms. However, with the proposed rule, the Department has now included small farms in the moratorium, going beyond the scope of the original rules. This extension of the moratorium to small farms has been proposed without any scientific or regulatory justification. This further demonstrates the arbitrary nature of these proposed changes, which we believe lack sound reasoning or evidence-based support.

Comment 4: Why is Big Creek listed as impaired with an unknown cause, yet has been used to justify the moratorium?

Big Creek (middle) is listed on the 303(d) list as impaired, but the cause of impairment is stated as "unknown." This indicates that the Department lacks sufficient data to conclusively link the impairment to swine farming or any other scientifically sound reason/cause. Additionally, other water bodies on the 303(d) list have not been subject to similar moratoriums.



Comment 5: Why invoke karst topography as justification when existing regulations address the risks and please explain why the land application of swine manure in fields underlain by karst is considered unacceptable in the Buffalo River watershed, while the application of other forms of nutrients is allowed?

The presence of karst terrain has been cited as a rationale for the moratorium. However, the USDA's Agricultural Waste Management Field Handbook (AWMFH) allows for the siting of farms in karst regions with additional safeguards. Moreover, the Buffalo River National Park Service (BRNPS) permits nutrient applications on fields adjacent to the Buffalo River under nutrient management plans. If karst terrain poses such a significant risk, it seems inconsistent to allow nutrient applications by the BRNPS while prohibiting swine farms farther away from the river.

Comment 6: Why use "unnecessary risk" as justification for an emergency moratorium when the law requires "imminent peril"?

The justification for the emergency moratorium does not meet the statutory threshold of "imminent peril," as required by law. The use of "unnecessary risk" lacks the urgency necessary for emergency rulemaking and raises concerns about the overreach of regulatory authority. We also question whether the original issuance of the temporary 2015 moratorium was correctly applied under emergency provisions. The lack of an actual emergency at that time—and now—suggests that the emergency rulemaking process was, and continues to be, improperly used to justify unnecessary regulatory action.

Comment 7: Why invoke emergency authority when no clear emergency exists?

The Department has invoked emergency authority without evidence of an immediate crisis to justify bypassing the standard regulatory process. This approach, both in 2015 and now, undermines the legitimacy of the emergency moratorium and calls into question the necessity of such measures.

Comment 8: Is EPA requiring the Commission or the Department to implement a moratorium in the Buffalo River watershed?

According to rulemaking documents, "The risk of not updating this rule is that the EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. The loss of delegated authority would result in the EPA becoming the permitting authority for Arkansas." Although parts of the rule making may be necessary, we do not believe the language in Section 6.202, whether retained or removed, is required as part of the programmatic updates mandated by the EPA.

Conclusion

On behalf of our members, especially those living and working in the affected counties, we respectfully request the removal of Section 6.602 from Rule 6. The proposed moratorium unjustly infringes on the right to farm, disregards scientific evidence, and conflicts with established regulatory processes. Removing the moratorium would bring the rule in line with sound science, respect property rights, uphold principles of fair regulation, and still provide the Department authority to deny permit applications as they deem noncompliant.

Thank you for considering our comments. We look forward to continued engagement on this important issue.