

ADEQ

ARKANSAS
Department of Environmental Quality

February 20, 2014

Earthjustice Northeast
48 Wall Street, 19th Floor
New York, NY 10005
neoffice@earthjustice.org

RE: Response to Earthjustice's letter regarding C&H Hog Farms, Inc.
Permit Tracking No. ARG590001 AFIN 51-00164

Dear Ladies and Gentlemen:

The Arkansas Department of Environmental Quality ("ADEQ" or "Department") takes the responsibility to protect the environment of the State of Arkansas very seriously. Our concerns encompass all waters of the State, including the Buffalo River. I offer the following in response to the issues over which ADEQ has regulatory authority as referenced in your February 12, 2014 correspondence.

The Department is closely monitoring the operations at C&H Hog Farms, Inc. ("C&H Hog Farms"). One stated intent of your letter was "to inform ADEQ of new and relevant information concerning C&H Hog Farm"; however, as acknowledged by your letter, ADEQ's inspection reports had already noted discrepancies in the land application fields prior to receiving your letter. (Please see the attached inspection reports and responses.)

As for the concerns regarding the land application sites, according to C&H Hog Farms's September 20, 2013 response to an ADEQ inspection report, land application activities on Field 5 have ceased until the map discrepancy is resolved. Modification of the Nutrient Management Plan ("NMP") would be required prior to use of this property for land application activities (or if additional land application sites were proposed to be added). Additionally, after a review of the NMP and available acreage, ADEQ has determined that adequate property exists for land application of all generated wastes, even without Field 5 and the questioned portions of Fields 12 and 16. Land application rates are based on the Arkansas Phosphorus Index, which assesses the runoff risk value to adjacent surface waters and determines the appropriate allocation of nutrients for each receiving field. The Phosphorus Index scale applies a class label to the amount of 'risk' of discharge of phosphorus during land application. The Department believes that land application in accordance with the Phosphorus Index is protective of waters of the State. It should also be noted that in an instance of more waste being generated than can be land applied to the fields as allowed under this permit, Section 3.2.3 of the Concentrated Animal Feeding Operations ("CAFO") general permit allows for the transfer of manure or process wastewater to other persons with authority to land apply the waste. Records must be kept of these transfers for a period of five years.

If Field 5 and portions of Fields 12 and 16 were to be removed from the NMP without any other proposed changes, this would be considered a non-substantial change in accordance with Part

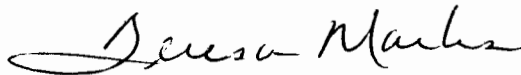
3.2.6.4(d) of the CAFO general permit. Non-substantial changes of the NMP do not require a public notice and comment period, but any such changes would be made publicly available on the ADEQ website. If land application sites were proposed to be added, then that change would be a modification requiring public notice and comment. To date, no such change has been proposed by C&H Hog Farms. C&H Hog Farms has stated that it is working with an engineer to revise the land application maps, which it will submit to ADEQ by March 30, 2014.

For the reasons stated above it is not my intent at this time to reopen C&H Hog Farms permit coverage in its entirety. However, ADEQ will continue to review the CAFO general permit and the Annual Reports submitted by C&H Hog Farms to ensure continued compliance with applicable law and regulations.

With reference to the research study being performed by the University of Arkansas Big Creek Research Team, the Department agreed to have neither authority over, nor direct knowledge of, the day-to-day activities of the research team in order to ensure that the research is being performed as an independent review of the permitted facility. I would therefore ask that all questions regarding the study be directed to the University of Arkansas.

Thank you for your attention to this matter. If there are any questions concerning this submittal, please contact John Bailey, Permits Branch Manager in the Water Division, at (501) 682-0629 or by email at bailey@adeq.state.ar.us.

Sincerely,



Teresa Marks
Director

TM:kay/cv

cc: Hank Bates, Carney Bates Pulliam PLLC (hbates@cbplaw.com)
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