

April 14, 2016

Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Director Keogh,

Thank you for your review of my comments regarding NPDES General Permit ARG590000 for Eligible Operators of Concentrated Animal Feeding Operations (CAFOs) within the State of Arkansas. I tried my best to include specific requests or language to be included or removed is presented in bold. If these requests are unclear then please request further clarification.

1.3 – change language to **include**: “...two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes **only for the purposes of determining the number of animals at an operation.**” As it reads now, there are no assurances that addition of land for waste/manure application will be subject to the public notice or comment process.

1.4 – please add subsections to **include**:

1. “**Discharges directly to Outstanding Resource Waters (Regulation 2.203)**” – no exception should be given to this

2. “**Discharges upstream of an Outstanding Resource Waters (Regulation 2.203)**” – only exception should be granted if it can be proven that downstream uses and water quality will not be degraded and will ensure protection of the antidegradation policy protecting Tier 3 waters.

1.4.5 – change language to **include**: “Dischargers to water quality impaired water (**waterbodies that appear in either the latest EPA approved Arkansas 303(d) list or the latest Draft Arkansas 303(d) list**) – the fact that ADEQ has not been able to get a 303(d) list approved in several years, something that seems rather unique to Arkansas, so I doubt the blame is all on EPA, should not prevent ADEQ from taking the most conservative approach to protect waters of the state.

1.4.5.1 – add language to ensure that “any discharges” also means “agricultural stormwater discharge” as well, and that language in other parts of this permit do not provide a loophole for which that may be considered allowable. Agricultural stormwater discharge should be the only way in which there is *any* discharge covered under this facility, so unless specifically stated in this part, how can this be perceived as any more protective? The only way in which coverage should be granted to such facilities is if wastewater is first being treated before land application and/or storage.

1.4.5.3 – What kind of monitoring is required to ensure this will be the case? If known pollutants are known or expected to originate from the facility, or waste generated from, then how does this ensure that these pollutants will not be contributed during times of “agricultural stormwater discharge”? If waste is not treated and tested to provide this supporting documentation, then waste in holding ponds (or if before land application of waste) should have to be routinely (minimum of 1/month *even if somehow able to meet burden of proof beforehand*) sampled for parameter of concern to ensure any discharges will not be contributing to impairment. At the very least, this should be applied to

parameters that are suspected of most likely entering waterbody during stormwater runoff events and that are likely to affect a designated use that may be impaired by such an excursion. For example – *E. coli* increases with rain (“storm”) events, and recreational use (canoeing, kayaking, rafting, etc.) increases with rain (“storm”) events, and ingestion of water is increased through these uses as compared to floating on a lounge raft during baseflow events, then it would be safe to assume that the only way to protect these recreational users would be to ensure water quality at these times meets recreational standards.

1.7.1 – please change language to require NMP be completed or revised before reissuance of permit. If revisions need to be made to NMP, this should be factored in be for reissuing a permit that will allow coverage for 5 years. Also, comments received by the public regarding a NMP for a facility that has already been issued a permit is really a futile exercise.

1.8 – please include assurances that transfer of this permit will have stipulations preventing known violators from easily obtaining coverage under this permit in that fashion. Unless violator has shown reasonable effort to ensure good standing, transfer of permits should have some sort of safeguards to prevent automatically being transferred a permit.

Part 2 – I realize that these subparts come from 40 CFR 412, but please reference in text of 2.1, 2.2, and wherever else applicable for ease of reference and transparency.

2.2.1.2 – please **remove** language: “All CAFOs subject to 40 CFR 412 Subpart C and **existing sources subject to** 40 CFR 412 Subpart D...” *or* please provide proper rationale for why existing sources might not be subject to 40 CFR 412 Subpart D.

2.2.1.2 – change language to **include**: “**and**” at the end of 2.2.1.2(a) and 2.2.1.2(b) so that it cannot be interpreted as “*or*”.

2.3.1 – please provide logical explanation as to why Fecal Coliform Bacteria (FCB) is monitored instead of *E. coli* if *E. coli* is a better indicator of pathogens and it would appear that ADEQ no longer routinely samples FCB during ambient water quality monitoring. If the simple reason is that FCB is cheaper to analyze than *E. coli*, it should be pointed out that the only time in which monitoring is required is during an unanticipated discharge event – therefore, an argument stating economic impact should be considered null, because these occurrences, in theory, should occur no more than once every 24 hour/25 year storm event *or* during highly unlikely equipment failures. If such events are anticipated to cause unnecessary and burdensome economic impact due to frequency of such circumstances, then that would stand to reason that the permit should not be issued in the first place.

2.3.2 (or wherever you deem more appropriate, as long as it is under 2.3) – change language to **include**: “**A certified laboratory must analyze the samples**”- specific language that is mentioned in Part 7. Monitoring and Reporting Requirements of your factsheet, but that doesn’t actually show up anywhere in the permit.

2.3.4 – change language to **include**: “**Oral 24-hour reporting is required for any by-pass or upset or any noncompliance which may endanger health or the environment.**” – Again, this is specific language that is mentioned in Part 7. Monitoring and Reporting Requirements of your factsheet, but that doesn’t actually show up anywhere in the permit. In addition, written submission of discharge should be provided to the Department within 5 days – as is required by other ADEQ permits (e.g. ARG50000).

There is absolutely no reason why circumstances that may have negative effects to human health would not have more stringent reporting requirements. Also, as it stands now, this is not consistent with 9.3 Twenty-four Hour Reporting of this permit.

2.4.1.1 – please change language to **remove**: “...that prohibit **or otherwise limit** land application...”

2.4.1.5 – please define “characteristics”.

2.4.1.6 – please change language to **include**: “An evaluation of the adequacy of the designed manure storage structure **and land application area...**”

2.4.1.8 – please clarify what is meant by “effluent limitations” if the nature of the permit is one that should result in no discharge?

3.2.4 – please add to this section a requirement of the permittee to **include** in annual report **field specific rates of application**, as this is a requirement that must be included in the 3.2.5 Terms of the nutrient management plan, the only way to determine compliance is to require this be reported.

3.2.5 – Please re-word to better clarify the following: “The terms must address rates of application using one of the following two approaches, unless the Director specifies that only one of these approaches may be used:” – Large and medium (at the very least, large) should be required to provide both linear and narrative approaches.

3.2.5.1(a) – please clarify how “field-specific assessment of the potential for nitrogen and phosphorous transport from each field” is determined and whether or not it accounts for subsurface loss.

3.2.5.2(c) – please either **remove** or define what is meant by “**credits**”.

3.2.6.1 – Please either remove altogether or rationally explain why calculations made in accordance with requirement of Parts 3.2.5.1 b and 3.2.5.2 d would not be used to more accurately creating or revising a nutrient management plan.

4.1 – Setbacks from streams would more appropriately be calculated from floodplain elevation, rather than from the ordinary high water mark. Please revise.

4.2.1.2 – change “runoff to surface waters” to “runoff to Waters of the State” to be more consistent with the rest of the document.

4.2.1.3 – change language to **include**: “The **sample collection points, sample collection methods, date, time, and collector of samples**, and results of these analyses...” if you deem this is not an appropriate location to add that language, please specify where this information will be recorded and reported.

4.2.1.5 – change language to **include**: “...300 feet of Extraordinary Resource Waters (ERWs), **Ecologically Sensitive Waters (ESWs)**, and National and Scenic Waterways (NSWs) as defined by the APC&EC Regulation **2.106; known habitats for federally listed threatened and endangered species and their designated critical habitat as declared by the U.S. Fish and Wildlife Service**; 50 feet...”

4.2.1.5(d) – remove altogether. Setbacks should not be considered an alternative, they should be considered supplementary to other BMPs. Stormwater can readily travel 100-300 feet.

4.2.1.6 – change language to **include**: “...or when precipitation is imminent (>50% chance of rain) **within 24 hours**”.

4.5 – items 4.5.1 through 4.5.10 should be submitted to the Department annually and made publically available. In addition, please add to list of requirements to be recorded and submitted – precipitation amounts 7 days prior and 24 hours post land application.

4.5.8 – change language to **include**: “Total amount of nitrogen and phosphorous, **and amount of litter, manure, or process wastewater (in volume)**, actually applied...”

5.1 – change language to state that **all applicants seeking coverage under this permit** (can add caveat that it is not necessary for permit *renewal*) and either add language to **include** “...for a general permit for a proposed Concentrated Animal Feeding Operation (CAFO) **or land application permit** in Arkansas (ARG590000)...”. Or remove the CAFO specific language. Either way, as it reads now, language does not allow for public notification to be required for land application coverage under this permit. This is not okay. Spreading of waste across a greater area does not necessarily mean reducing environmental impact. Depending on the topography and geology it could mean further spreading the environmental impact. (While a specific comment to this permit, this seems to be something ADEQ has a difficult time wrapping their head around. Suggestion: either hire a karst hydrogeologist, or listen to one, if this is something the department cannot understand.)

5.1.5 – rather than “in the county of the CAFO production site”, this should state **in the county of the proposed permit application site**. The county of the CAFO production site does not necessarily overlap with application sites, and notifying the wrong county of the proposed activity is pointless and not transparent. Also, this should specify that notice should be given under **Legal Notices**.

5.1.6 – change language to **include**: “...will contain the same information as that which ADEQ requires the applicant to publish in the paper, **in which “NOTICE” is printed in lettering a minimum of 6 inches tall**. The sign shall be posted...”

5.2.1 – please add language back to include the NMP and draft terms of nutrient management plan will be included on the website and will be public noticed in the newspaper and through appropriate ADEQ list serves, or explain why these will no longer be made available on ADEQ’s website for a 30 day public review and comment period.

5.2.2.4 – By “comments will only be considered if they regard a specific facility’s NOI, ...” I hope that means comments concerning the location of proposed facility or land application, as well as amounts, will be considered given concern for environmental or human health effects of proposed permit. Also, there should be language that would allow comments to be taken into consideration for the appropriateness of covering such facility or land application under the general permit, rather than an individual permit. If the case is made that the general permit is not appropriate for the proposed project, the Department’s “go-to” response should not simply be that the comments could not be considered as they pertained to the general CAFO permit rather than a facility’s coverage under this permit. It stands to reason that if the case is made that if requirements of the general permit are not sufficient, given environmental or human health concerns, for said facility coverage then that **is** pertinent information to take into consideration for said facility’s coverage under an individual permit instead.

6.3 – Please change to include all parts of 40 CFR 122.62, rather than only Part 122.62 (a)(2), or give reasonable explanation as to why all other parts of 40 CFR 122.62 were ignored.

7.4.2.2 – Please add language to include – “In which event, sufficient monitoring will be required to ensure environmental and human health are protected and proper notifications can be made to notify and protect users of recreation and domestic water supply uses as defined by Primary Contact Recreation, Secondary Contact Recreation, and Domestic Water Supply uses in APC&EC Regulation 2.302.”

8.2 – same comment as noted in 2.3.2 – change language to **include: “A certified laboratory must analyze the samples”**- specific language that is mentioned in Part 7. Monitoring and Reporting Requirements of your factsheet, but that doesn’t actually show up anywhere in the permit.

9.3 – please **remove** the following sentence – **“The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.”**

9.4 – There seems to be a typographical error in “...not reported under Part and 9.3 at the...”.

9.6 – Please replace the following language that has been stricken from this revision so that the following is **included: “This permit will expire 5 years from the effective date. If this permit is not re-issued or replaced prior to the expiration date, it will be administratively continued in accordance with APC&CE Regulation No. 6 and remain in force and effect.”** Also, please explain how currently language cannot be misconstrued to be interpreted as permit never expiring and applicant never having to reapply.

10.10 – Please clarify under what circumstances, regulation, or guidance the department would/does allow “a manmade ditch or pipe that carries manure or wastewater to surface water; **or** the animals come into contact with surface water that passes through the area where they’re confined”.

10.13 – Language should remain “the Administrator of the U.S. Environmental Protection Agency and/or the Director of the Arkansas Department of Environmental Quality”.

Additional comments:

Please adopt 40 CFR 122.23(c)(3) in regards to an on-site inspection to determine if the operation should and could be regulated under the permit program.

Where appropriate, please add language that includes assurances of financial liability – by that I mean insurance, specifically.

While I understand at the time of this renewal the Department likely has not developed any design or permit requirements specific to CAFOs and land application sites within the Boone and St. Joe Formations, but I encourage you do so, at the very latest, before the next renewal of this permit. In the meantime, please add language to *this* permit that will allow additional requirements and provisions to be placed on such permits within these formations. Again, it is very troubling that the Department seems to have no understanding of the fragile ecosystems present in such karst terrains and seems to not care that such development is not suitable for such an area. The high permeability of these soils (sure, ADEQ requires soils analysis, but does that include the depth of these soils and what lies beneath the soils? NO!) and underlying formations provide direct conduits to our aquifers and surface waters –

our waters that we have the responsibility of protecting for existing and future generations. It may be necessary to require electrical resistivity imaging for all such proposed CAFOs and fields within the Boone and St. Joe Formations in order to sustainably develop these types of activities within this area. If you need further information as to why such things might be necessary for this area, please refer to Figure 1. of *“Why it is important to study water flow in karst in the area of a concentrated animal feeding operation, especially in the Buffalo National River Watershed”* (<http://buffaloriveralliance.org/Resources/Documents/Why%20It%20Is%20Important%20to%20Study%20Water%20Flow%20in%20Karst-handout121114.pdf>). As you can see, I hope, contaminants can travel great and unpredictable distances in this area. Be sure to note the dye detects upstream of the injection site on Big Creek, as this may have implications as to why BCRET is detecting such high E.coli levels in their upstream “control” site. While I think it should go without saying, I will say it anyway, I think this might mean it will be rather difficult to derive any conclusions from this study Arkansas tax payers are currently funding given these results. Spoiler alert: there is no “control” and the results will be inconclusive.

Also, as your factsheet states under Part 12. Public Notice – “...any interested persons may submit written comments on the permit to clarify issues involved in the permitting decision”. As my comments are all in regard to the general permit, which lays the guidelines for the permitting decision, I request that any and all comments that the Department does not feel are acceptable additions, considerations, deletions, etc. to this permit be responded to with specific citations and rulemakings as to why they are inappropriate. In addition, if my comments cannot be incorporated due to requirements not being specifically outlined in the federal or state regulation, I request responses as to where my particular comments would have to be added (specifically what state regulations) before they could be incorporated into this permit.

Thank you for receiving and responding to each of these 50+ comments.

Your friend,

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Submitted to Water-Draft-Permit-Comment@adeq.state.ar.us

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