

PRESS RELEASE

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The Buffalo River Watershed Alliance and the Arkansas Canoe Club announced today a Notice of Intent to sue C&H Hog Farm, Inc. over violations of the Federal Clean Water Act (CWA).

The fundamental purpose of the CWA is to protect the waters of the United States from degradation by prohibiting the discharge of contaminants into the waters of the United States except in limited circumstances. C&H violates the Clean Water Act in the following ways:

1. C&H discharges swine wastes from its two waste storage ponds through seepage through the soil liners of the ponds. The amount of seepage allowable according to USDA guidance documents is approximately 5,000 gallons/day/acre from the two wastewater holding ponds, which consist of approximately 1.4 acres, or approximately **7,000 gallons per day since 2013**. Seepage is not measured but could be substantially more due to erosion cracks that have been observed in the lining of the ponds. *The seepage is not authorized by the expired NPDES general permit under which C&H is allowed to operate.*

2. C&H improperly discharges swine waste. C&H discharges raw swine waste on its fields using “honey wagons”. This activity is permitted *provided* the slurry is not applied to fields that have shown through testing to be high in phosphorous. If a field tests “high” in phosphorous and additional waste is applied, it is no longer fertilizer, but instead becomes a means of waste disposal. Excessive amounts will not be absorbed by plants and will leach through or flow across the thin layers of soil to Big Creek, a major tributary of the Buffalo National River. Over- application of swine waste is evidenced by elevated levels of nutrients and bacteria found in Big Creek and by soil test results showing that all but one of the application fields are “Above Optimum” for phosphorus. The University of Arkansas Extension Service recommended that no further phosphorus be applied to those fields, yet *C&H continues to apply waste in excess of agronomic need.*

3. C&H disposes Swine Slurry in a Floodplain. C&H spreads and disposes of swine wastes on fields located in the floodplain of Big Creek. Big Creek is a tributary of the Buffalo River that is subject to rapid fluctuations in elevation due to rainfall, which causes flooding over the fields. Waste discharged by flooding flows across the surface of the fields into Big Creek and ultimately the Buffalo River. Elevated levels of

“nutrients” and E-coli bacteria found in samples from Big Creek and the Buffalo River, both waters of the United States, *have contributed to portions of Big Creek and the Buffalo River being placed on the Clean Water Act Section 303(d) draft list of Impaired Water Bodies for the State of Arkansas.*

4. The NPDES General Permit Lapsed in 2016 and C&H Has Not Qualified for an Individual Permit. ADEQ denied C&H’s application for a Regulation 5 individual permit; and the failure of C&H to obtain an individual permit after the lapse of the above mentioned General Permit means that *C&H is currently operating the Facility without a valid permit.* C&H is attempting to extend coverage of its now-expired General Permit coverage by appealing decisions of the APC&EC Commission that are already favorable to C&H to the Circuit Court of Newton County, Arkansas, and by filing frivolous litigation against ADEQ. Such actions are solely for the purposes of delay, and to attempt to perpetuate coverage of the General Permit indefinitely.

5. C & H obtained its general permit by Misrepresentation of Facts and Any Remaining Coverage Should Be Terminated. In its 2012 NPDES permit application C&H submitted a required Nutrient Management Plan (NMP) for determining the amount of waste to be applied to fields. That NMP contained a false phosphorus storage loss factor of 80%. Phosphorus is not lost from the system as currently managed by C&H. Since Phosphorus is not volatile and a reasonable assumption would be zero loss rather than 80%, the use of an 80% storage loss factor in the Application is a misrepresentation of the conditions of operation of C&H Hog Farm, and leads to the gross over-application of phosphorus. *The NPDES General Permit of C&H was issued based upon that misrepresentation and any continued coverage should be terminated.*

Through this Notice of Intent, the Buffalo River Watershed Alliance and the Arkansas Canoe Club have given notice that if the Clean Water Act violations described above are not corrected within sixty days, they may file suit in the appropriate United States District Court against C&H Hog Farms, Inc., to enjoin its continued operation of the hog farm and request assessment of penalties based upon such violations.

The Notice Of Intent may be found here. <https://buffaloriveralliance.org/resources/Documents/Letter%20of%20Intent%20to%20Jason%20Henson.pdf>

Buffalo River Watershed Alliance
buffaloriveralliance.org