EXHIBIT I

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June 19, 2015

Phil Price
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Re: *Third-Party Rulemakings, Arkansas Pollution Control and Ecology Commission Regulations 5 and 6*

Mr. Price:

This letter requests that you place the attached proposed rules on the agenda for the July 6, 2015, meeting of the Joint Public Health, Welfare and Labor Committee. The attached proposed rules are amended versions of the rules which the Joint Public Health, Welfare and Labor Committee conducted hearings on prior to the last session. The petitioners seek legislative review of both rules.

The rules now contain a paragraph "E" which calls for the Arkansas Department of Environmental Quality to revisit the rulemakings five years after the effective date. No other changes are present. The accompanying documents previously submitted in conjunction with this rulemaking are also unchanged.

Please contact me with any questions or concerns. You may reach me at 501-396-5449, or ross@mcmathlaw.com. Thank you for your assistance with this matter.

Sincerely,

Ross Noland

RN/

Enc.
cc: Donna Davis

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF THE OZARK SOCIETY AND THE ARKANSAS PUBLIC POLICY PANEL **DOCKET NO. 14-003-R**

NOTICE OF AMENDED PROPOSED RULE

This notice informs the Commission that petitioners seek legislative review and final adoption of the proposed rule attached to this Notice as Exhibit A. The attached proposed rule differs from Exhibit A attached to petitioners' Amended Petition to Initiate Third-Party Rulemaking in one way: the addition of paragraph (E) to proposed Reg. 6.602. Petitioners seek legislative review, and will move for final adoption upon completion of such review.

Respectfully Submitted,

By: _____

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CERTIFICATE OF SERVICE

I, Ross Noland, hereby certify that a copy of the foregoing has been sent via electronic mail to the following parties of record, this 19th day of June 2015.

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_____
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EXHIBIT A

Pollution Control and Ecology Commission #014.00-006

Arkansas Pollution Control and Ecology Commission

Regulation No. 6
Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)

DRAFT FOR LEGISLATIVE REVIEW

Submitted to the PC&E Commission: June 19, 2015

REGULATION NO.6
REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

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CHAPTER SIX: ~~LAKE MAUMELLE BASIN~~ WATERSHED SPECIFIC REGULATIONS

Reg. 6.601 Lake Maumelle Basin

All surface discharges of wastewater in the Lake Maumelle Basin are prohibited, with the exception of discharges permitted under the NPDES stormwater discharge program.

Reg. 6.602 Buffalo National River Watershed

(A) The following definitions apply to Reg. 6.602:

(1) The "Buffalo National River Watershed" is the area within United States Geologic Service Hydrologic Unit Code 11010005.

(2) "Coverage" means a notice of coverage issued pursuant to a general permit.

(B) The Director shall not issue a permit or coverage pursuant to Regulation No. 6 for a CAFO in the Buffalo National River Watershed with:

(1) 750 or more swine weighing 55 pounds or more; or

(2) 3,000 or more swine weighing less than 55 pounds.

(C) Reg. 6.602(B) does not prohibit the Director from:

(1) Issuing a permit or coverage renewal or modification for a CAFO in the Buffalo National River Watershed with an active permit or coverage as of the effective date of this regulation; or

(2) Issuing a new Regulation No. 6 permit or coverage for a facility which holds an active Regulation No. 5 permit as of the effective date of this regulation.

(D) A permit or coverage renewal, modification, or new permit or coverage issued pursuant to Reg. 6.602(C) shall not increase the number of swine permitted at a facility.

(E) Five years from the effective date of this regulation the Director may initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602.

EXHIBIT I

DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION

SUBJECT: Regulation No. 5; Liquid Animal Waste Management Systems Third Party Rulemaking by Ozark Society and the Arkansas Public Policy Panel

DESCRIPTION: This is a new Chapter 9 to prohibit the director of the Arkansas Department of Environmental Quality from issuing new permits pursuant to Regulation No. 5 for the operation of a certain defined size of confined animal operations in the Buffalo National River Watershed. This is necessary to protect the existing water quality of the Buffalo National River and the associated tourism and recreational based economy surrounding the river.

PUBLIC COMMENT: A public hearing was held on June 17, 2014, in Harrison, Arkansas. The public comment period ended on July 1, 2014. The following comments were received:

COMMENTS RECEIVED FROM THE OZARK SOCIETY AND THE ARKANSAS PUBLIC POLICY PANEL:

The public comment record for Docket No. 14-002-R contains 2,298 comments pertaining to changes to Arkansas Pollution Control and Ecology Commission Regulation 6, entitled Regulations for State Administration of the National Pollution Discharge Elimination System ("Reg. 6"). Two thousand sixty-nine (2,069) comments (90.03%) favor this regulation change. Nine (9) comments (.39%) are neutral or unclear as to their position regarding the regulation change. Two hundred twenty (220) comments (9.57%) oppose the rulemaking.

This rulemaking closely relates to Docket No. 14-003-R, which amends Arkansas Pollution Control and Ecology Commission Regulation 6, entitled State Administration of the National Pollutant Discharge Elimination System ("Reg. 6"). Both rulemakings prohibit swine operations housing either 750 swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds. The dual rulemakings are necessary to capture permit applications submitted pursuant to parallel state (Reg. 5) or federal (Reg. 6) permitting schemes.

The first two categories in the Response to Comments section below summarize general comments for and against the rulemaking. General comments are those which petitioners observed repeatedly. The next three groups address individual comments for, neutral, and against the rulemaking. Petitioners selected individual comments for response based on depth or uniqueness.

Petitioners conclude that the greater weight of the scientific evidence in the public comment record supports this rulemaking. Limiting the size of swine operations in the Buffalo River watershed protects water quality and the environment.

The following definitions apply to the Response to Comments Below:

- "ADEQ"-Arkansas Department of Environmental Quality.
- "Commission"-The Arkansas Pollution Control and Ecology Commission.

- "medium or large swine CAFO"-A Concentrated Animal Feeding Operation subject to, and permitted by, Reg. 6 and the National Pollution Discharge Elimination System, which houses either 750 swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds.
- "EPA"-Environmental Protection Agency.
- "Petitioners"-The Ozark Society and the Arkansas Public Policy Panel.
- "SRAP"-Socially Responsible Agriculture Project.

Most commenters do not distinguish between "Confined Animal Operations" regulated by Reg. 5, and medium or large swine CAFOs subject to Reg. 6. For the purposes of this Responsive Summary, petitioners assume that a commenter is referring to both permitting schemes, unless specifically stated otherwise. ADEQ takes a similar approach in categorizing comments. The public comment record compiled by ADEQ for this rulemaking, Docket No. 14-002-R, and the related proposed changes to Reg. 6 found in Docket No. 14-003-R, are identical.

ADEQ received 31 comments which were either the second, third, or fourth comment received from that individual. Where a commenter submitted more than one comment, number corresponding to the order in which ADEQ received the comment distinguishes the multiple comments. For example, in the text below, Robert Cross' first comment is denoted by a (1st) following his name, whereas a (3rd) follows references to his third comment.

General Comments in Favor

1. *Karst topography is not suitable for large swine operations. Leakage from waste holding ponds into groundwater, and transport of pollution and contaminants via groundwater, through karst topography, pose threats to the Buffalo River's water quality and those who use it.*

Petitioners agree that Karst topography in the Buffalo River watershed allows rapid transport of land applied and lagoon-stored hog waste. Reports and comments received by ADEQ from Marti Olesen, Chuck Bitting, Robert Cross (2nd)/John Van Brahana, and SRAP state that Karst topography is not a suitable setting for the medium or large swine CAFOs this rulemaking prohibits.

2. *As our Nation's first National River, the Buffalo deserves heightened protection now, and for future generations.*

Petitioners concur. The Buffalo National River is an extraordinary resource which warrants heightened protection. Many commenters expressed their desire to maintain or improve the Buffalo's water quality. The proposed rule is consistent with, and furthers, the purpose of state and federal laws and regulations governing the Buffalo River, as Ross Noland (2nd) states.

3. *Water pollution and the smell of large swine operations harm tourism in the Buffalo River watershed. Tourism is an important economic driver for the residents of the Buffalo River Watershed, and the state of Arkansas.*

Many commenters note that the rulemaking protects the tourism economy, which accounts for approximately $43 million in direct spending every year in the Buffalo River

watershed. The Arkansas Department of Parks and Tourism submits a comment noting the economic impact of tourism in this state. Commenter Jim Metzger discusses the possible negative economic impact of reduced tourism in the Buffalo River watershed resulting from large swine operations.

4. *Air pollution, including ammonia, hydrogen sulfide, and nitrous oxide, are toxic to human health, especially the young. Methane is a potent greenhouse gas. Limiting the size and location of large swine operations protects public health and children.*
The comments of Ginny Masullo (2nd), Wes Norton (1st), Ross Noland (1st), John Whiteside, and SRAP each address the harmful air emissions produced by the land application and lagoon storage of large amounts of hog waste. Petitioners concur that the proposed rule will protect the air quality of the Buffalo River watershed from many of the harms noted in these comments.

5. *Harmful bacteria and parasites from large hog farms can be spread by air or water as a result of land applying manure.*
Petitioners agree that land application of millions of gallons of untreated manure from medium or large swine CAFOs is incompatible with contact-based recreation in the Buffalo River watershed. Several commenters discuss harm caused by water borne pathogens, including SRAP, Wes Norton (1st), John Whiteside, Robert Cross (1st). This rule protects residents and recreational users of the Buffalo River from harmful bacteria and parasites harbored in swine waste.

6. *Heavy rainfall and floods pose an unacceptable risk of a catastrophic failure of a swine waste storage lagoon. Events in places such as North Carolina which resulted in millions of gallons of manure flowing into the New River, and millions of resulting dead fish and closed coastal areas, should serve as a warning of the catastrophic impacts than can result from intensive swine farming and manure storage in lagoons.*
The proposed rule reduces the threat lagoon storage of hog waste poses to the Buffalo River. Anna Weeks' comment provides examples of lagoon storage failures. Such a failure would devastate water quality. Several commenters, including Mike Quearry, note that the Buffalo River watershed's steep tributaries are prone to flash floods which can destroy a waste storage lagoon.

7. *The Commission and/or the Department failed to do its job in permitting C & H Hog Farm.*
This rulemaking does not pertain to the permitting of C & H Hog Farm.

8. *The Department should order C & H Hog Farm to cease operations to prevent harm to the Buffalo River.*
This rulemaking does not pertain to the permitting of C & H Hog Farm

9. *ADEQ received 1708 comments from members of the National Parks Conservation Association which state the following:*
I am writing in support of the proposed changes to Regulation 5 and 6, submitted to the APC&EC commission on April 21, 2014 by The Ozark Society and the Arkansas Public Policy Panel. Specifically in Regulation 5, Liquid Animal Waste Management Systems, I

support the watershed-specific regulation that prohibits the Director of ADEQ from issuing any new permits to Medium and Large confined animal operations (CAOs) or concentrated animal feeding operations (CAFOs) in the Buffalo National River Watershed. I also support the proposed changes to Regulation 6, Regulations for State Administration for the National Pollutant Discharge Elimination System (NPDES) noting that the Director shall not issue a permit of coverage pursuant to Regulation 6 for new medium or large CAO or CAFOs in the Buffalo River National Watershed. While I understand that these changes will not impact the current CAFO in the watershed, it is my hope that Governor Beebe, ADEQ, and Cargill will relocate the C&H facility and that it will no longer endanger the Buffalo National River Watershed. Thank you for the opportunity to comment on this rulemaking.
Petitioners highlight this comment due to the volume received. This rulemaking does not pertain to the permitting of C & H Hog Farm.

General Comments Against
10. *Regulation changes should be science based and reasonable. This change is a drastic measure without science to back it up.*
The record does not support this comment. The comments, records, and reports in the public comment record show that restricting the size of swine CAFOs protects water quality and the environment in the Buffalo River watershed. The record is devoid of any science-based studies showing that lagoon storage and land application of millions of gallons of untreated hog waste from facilities the size of those prohibited by this rulemaking does not impact high quality streams above karst topography of the type found in the Buffalo River watershed.

11. *The regulations changes are driven by fear and emotion.*
Petitioners disagree. This comment is subjective in nature, and does not comport with the weight of the evidence and comments in the public comment record.

12. *The Commission should delay considering this rulemaking until the state-funded Big Creek Research team led by Dr. Sharpley concludes its work.*
Petitioners disagree. The weight of the evidence in the public comment record shows that the lagoon storage and land application of wastes from medium or large swine CAFOs negatively impacts water quality. No delay is needed to determine what one such operation's impact is. Furthermore, the purpose of this rule is not to alter operations at existing facilities, but rather to prohibit future facilities of a certain size to prevent cumulative impacts.

13. *Please consider the benefits and stewardship of Arkansas farmers before you react to misinformation in the public arena.*
Petitioners agree that Arkansas farmers are stewards of their land. However, this rulemaking prohibits a very narrow, defined form of farming in a watershed deserving of heightened protection from the land application and lagoon storage of waste from medium or large swine CAFOs. The commenters identify no alleged misinformation.

14. *I am concerned about the right to farm.*

This rulemaking is a narrow restriction on a specific, non-existing use of property. This regulation does not impact existing farms.

15. *Ditch third-party rulemaking as an option. If hard decisions need to be made, they need to be made by ADEQ, this Commission and/or the duly elected members of the Arkansas General Assembly.*
Ark. Code Ann. § 8-4-202, passed by the General Assembly, authorizes rulemaking by third-party petitioners. The Commission makes the final determination regarding whether or not to pass this rule. Petitioners are within the law in requesting this rulemaking.

16. *As a group that embraces science at the core of its everyday function - to protect the water-quality and environmental resources of the state of Arkansas - it is amazing to me that the commissioners of the PC&E are allowing a third-party rulemaking proposal that is devoid of science to be considered for approval. How can you turn your back on science at the time it is most needed?*
The greater weight of the scientific evidence submitted in support of this rulemaking shows that restrictions on the size of swine CAFOs protect water quality in the Buffalo River watershed.

17. *If the EPA, sent in to find something wrong on this hog farm, walks away saying there are no violations, then why would the PC&E Commission overreact to some group of environmental extremists who just know something terrible is happening on that farm? Why, I ask again?*
This rulemaking does not pertain to the permitting of C & H Hog Farm.

18. *The scrutiny and research afforded C & H Hog Farm is the most extensive in the nation.*
This rulemaking does not pertain to the permitting of C & H Hog Farm.

19. *The proponents of this Third party Rulemaking go on and on about the threat of the waste handling storage lagoons leaking and the catastrophic failure. In Arkansas's long history of swine production we have NEVER had a catastrophic failure. The mid 1990's studies done of hog farms in the Buffalo River watershed showed that these lagoons had minimal to no impact on groundwater. Not because of the formation underlying them as some have claimed, but because they did not leak. These farms were constructed in the 1970's. Today's farms are constructed using much more stringent engineering design standards. If the ongoing research on C and H shows current regulatory requirements is not adequate, then the regulations can be modified to include additional permit requirements. This is a scientific approach.*
Petitioners disagree with the commenters' characterization of the 1990's studies, though not attached or specifically referenced by these comments, petitioners assume commenters are referring to Formica, S.J., *Using Data, Communication & Education to Improve Swine Waste Management in the Buffalo River Watershed*, and Van Eps, M.A., *Survey of Arkansas Swine Liquid Waste Systems*, both of which are found in the record. Those studies showed that it is possible to reduce environmental impacts through improving waste management practices. However, it is unclear what, if any, bearing those

studies have on the rulemaking at hand. The *Formica* report states the following regarding the farms in that study:
The number of sows at these facilities ranged from 250 to 500. During the course of the project, several watershed swine farmers converted to a farrow-to-wean operations in which 10 lb weaned pigs were shipped to a separate nursery operation. Subsequently, the number of sows increased to 300 to 550 per facility.
The Van Eps study states:
Farm #5 and Farm #7, are 300 sow-pig farrowing operations, housing approximately 300 sows, each weighing 147 kg. Every two weeks, 250 weaner pigs each weighing 4.5 kg, are removed from the farms.
This rule prohibits swine CAFOs with 750 or more swine weighing 55 pounds or more, or facilities with 3000 or more swine weighing less than 55 pounds. It appears that the 1990s studies do not involve facilities of the size this rulemaking prohibits. Furthermore, this rulemaking does not pertain to C & H Hog Farm. Petitioners reference and incorporate the comment of Robert Cross (3rd), which addresses the contention that the 1990s studies demonstrate anything beyond the findings that proper land application practices can reduce nutrient loading.

20. *I do not understand the concern about a small number of hogs being permitted five miles from the river when an estimated one and a half million people visit the river each year. The Park service applies more nutrients on fields that are next to the river, than C & H Hog Farms does under a permit on land that is over five miles from the river.*
The Commission and ADEQ do not regulate the volume of recreational use in the Buffalo National River, nor do they manage the Park Service's hay fields. Furthermore, this rulemaking does not pertain to C & H Hog Farm.
Response to Individual Comments for the Rule

21. *Marti Olesen comments that the rule change is appropriate due to the karst topography present in the Buffalo River Watershed, and suggests that heightened protections are appropriate in Arkansas karst areas, as evidenced by Regulation 22's restrictions on landfills above karst topography.*
Petitioners agree that Regulation 22 is a relevant example of the Commission previously demonstrating the need to provide heightened protections in karst topography.

22. *Charles Bitting states that he has assisted with many dye tests in the Buffalo River Watershed, and that groundwater does not necessarily follow surface topography. He also states that he assisted ADEQ staff in surveying weirs for the swine CAFO study in the early 1990s, and observed dead zones downhill of waste lagoons. Mr. Bitting also notes that limestone and dolomite are exposed at the surface in more than half of the Buffalo's watershed, creating serious concerns for the placement of lagoon storage due to the rapid transport of water in karst topography.*
Mr. Bitting's personal observations and experience are important first-hand accounts of the nature of karst topography, and the need for this rulemaking.

23. *James Metzger, an economist, states that economic analyses of large swine operations do not assess environmental costs that accompany large swine operations. He*

supports the rulemaking in order to protect the economic multiplier effect of tourism spending, and the integrity of the rural communities in the watershed.
Petitioners agree that the negative externalities of large swine operations in the Buffalo River watershed outweigh any benefit to local communities.

24. *Ginny Masullo (2nd) submits the American Public Health Association's statement on CAFOs which requests that governmental agencies impose a moratorium on new CAFOs until additional scientific studies on health impacts are developed.*
Petitioners state that the rulemaking will protect public health in the Buffalo River watershed from the threats discussed in the American Public Health Association statement.

25. *Anna Weeks submits case studies from Iowa, Illinois, Minnesota, North Carolina, Oklahoma, Pennsylvania, and Wisconsin of severe environmental degradation caused by waste storage lagoon failures and overflows.*
Petitioners agree that the rulemaking reduces the risk of swine waste lagoon overflows in a manner consistent with Arkansas's water quality standards, and other protections.

26. *John Whiteside comments that the rule change will protect community health, especially children and the elderly, from particulate, gas, and vapors such as ammonia and hydrogen sulfide, which can cause severe illness in human populations.*
Petitioners agree that the rulemaking protects public and environmental health of both residents and visitors in the Buffalo River watershed.

27. *Robert Cross (1st) submits an in depth comment with supporting scientific documents demonstrating why the rulemaking will protect water quality in the Buffalo River watershed. His comments are summarized as follows:*

a) Hog waste contains components which degrade water quality, including phosphorus, nitrogen, pathogens, and hormones.

b) Untreated swine waste has known paths from farms to surface water, including leakage from storage lagoons, and land application.

c) The likelihood of contamination is high from a CAFO in the Buffalo River watershed due to leakage through clay liner in ponds, spray fields, severe rainstorms, flooding, equipment failures, and drainage ditches causing discharges.

d) The threats to water quality expand exponentially with the number of CAFOs in a watershed. Swine produce incredible amounts of waste, which under current rules, is land applied in an untreated form.

Petitioners agree with each of Mr. Cross's comments in support of the rulemaking.

28. *Robert Cross (2nd) and Dr. John Van Brahana submit a detailed comment with supporting evidence to show that karst topography poses significant challenges for the lagoon storage and land application of swine wastes in the Buffalo River watershed. The theme of those comments is as follows:*

a) Karst topography is prevalent throughout the Buffalo River watershed. Commenter Brahana has extensively studied the topography of the Mt. Judea area, and found that it is typical of karst formations in that surface and groundwater interact easily, and groundwater flow is rapid, and dispersive.

b) Swine CAFOs present particular problems in karst topography such as pathogen transport and nutrient transport.

c) Brahana has conducted dye tests in the Mt. Judea valley, and found interconnections between wells, springs, and groundwater, and the Buffalo River, in the absence of attenuation of waste components. This leads to a conclusion that the risk to the Buffalo from large swine operations is extremely high.

d) Cross and Brahana also note that the Pindall, Arkansas landfill study near the Buffalo River in the late 1980s also showed that rapid transport of water, and potentially pollutants, from surface to ground is present near the Buffalo, as characterized by its karst topography.

Petitioners agree that the karst topography of the Buffalo River watershed is not suitable for medium or large swine CAFOSs. The rulemaking will restrict the size, and thus the amount of waste produced, by swine CAFOs in the Buffalo River watershed.

29. *Robert Cross (3rd) specifically addresses oral comments made on June 17th that certain studies show that modern clay waste lagoon liners do not leak. Mr. Cross takes issue with this assertion, noting that the 1990s studies relied on by the commenter contained no data regarding pond leakage, evaporation, or rainfall.*
Petitioners agree with the comments of Robert Cross (3rd).

30. *Comment of Ross Noland (1st), and attached studies and reports, support the rule change to limit the size and location of large swine operations to protect public and environmental health, including drinking water supplies, air quality, and preventing public exposure to pathogens, in the Buffalo River watershed.*
Petitioners agree that limiting the size of swine CAFOs in the Buffalo River watershed protects public and environmental health.

31. *Ross Noland (2nd) states that the rulemaking is within the Commission's powers, and is consistent with Arkansas's water quality standards, including water quality criteria, antidegradation policy, and the Buffalo's designation as an Extraordinary Resource Water. The comment also provides examples of other states which have regulated CAFOs above karst topography, and reviews federal management designations within the Buffalo River Watershed.*
Petitioners agree with the comments of Ross Noland (2nd). The Buffalo National River is deserving of the highest protection under both state and federal law.

32. *SRAP submitted an extensive comment, with supporting documentation, covering several unique topics including:*

a) ADEQ has the authority and duty to prevent water and air pollution.

b) CAFOs threaten the environment and public health by generating a staggering amount of manure which contains potential toxins. Contaminants are discharged, leak, or run off into surface and groundwaters, resulting in pollutants in water that threaten public health.

c) Streams in the BNR Watershed are listed as impaired waterbodies.

d) CAFO air emissions threaten public health.

Petitioners appreciate and agree with the well-researched and documented SRAP comments.

Response to Individual Neutral Comments

33. *ADEQ suggests adding a definition for "Animal Feeding Operation" and "Concentrated Animal Feeding Operation" to Regulation 6.*

This comment does not impact petitioners' Reg. 5 changes. Petitioners do not believe the suggested changes to Regulation 6 are necessary because Regulation 6 incorporates the federal definitions of "Animal Feeding Operation" and "Concentrated Animal Feeding Operation" by reference. Reg. 6.103(A) adopts the definitions found in 40 C.F.R. § 122.2, which states that 40 C.F.R. § 122.23 defines "Animal Feeding Operation" and "Concentrated Animal Feeding Operation." Reg. 6.104(A)(3) incorporates 40 C.F.R. § 122.23 verbatim. 40 C.F.R. § 122.23 contains the same definitions of "Animal Feeding Operation" and "Concentrated Animal Feeding Operation" now suggested by ADEQ. It does not appear to be ADEQ's practice to both incorporate terms and then define those terms. To do so would be repetitive.

34. *Forest Boles states that he cannot support or oppose the rulemaking because he does not know the scientific basis for the moratorium on swine operations of 750 or more hogs which weigh greater than 55 pounds or 3,000 or more swine weighing less than 55 pounds.*

The rulemaking and Docket No. 14-003-R propose a prohibition on further swine operations in the Buffalo River Watershed which house 750 or more swine weighing 55 pounds or more, or 3,000 or more swine weighing less than 55 pounds. The petitioners drew these numbers from the definitions of medium and large swine concentrated animal feeding operations found in federal regulations. 40 C.F.R. § 122.23(b)(4)(iv-v) and (b)(6)(i)(D-E). The Commission has adopted the same definition in past rulemakings. *See* Reg. 6.103(A)(adopting federal definitions) and Reg. 5.201. The history of the medium and large swine thresholds begins with EPA's 1973 animal confinement regulations for feedlots, which imposed regulations on facilities with 2,500 or more swine over 55 pounds, for the stated reason that this threshold "will cover the facilities which present the greatest potential for pollution control while limiting the number of applications to a manageable quantity." 38 Fed. Reg. 18,000. 1976 regulation changes retained the 1973 numbers because they were "justified by studies and data." 41 Fed. Reg. 11,458. The 1976 regulations also introduced regulation of medium CAFOs with 750 or more swine weighing over 55 pounds. *Id.* at 11,460.

The definitions of medium and large CAFOs remained static until 2003 changes to the CAFO regulations introduced regulation of swine under 55 pounds. EPA stated that a new definition was necessary due to changes in the industry, because "immature swine were not a concern in the past because they were usually a part of operations that included mature animals...in recent years, these swine operations have become increasingly specialized, increasing the number of large, separate nurseries where only immature swine are raised." 68 Fed. Reg. 7,176, 7,192. EPA supported its regulatory CAFO thresholds with a Technical Development Document which analyzed manure production. This rulemaking restricts swine CAFOs of the same size as those qualifying as medium or large swine CAFOs under federal regulations and Reg. 6. Utilizing known definitions and thresholds across both the state (Reg. 5) and federal (Reg. 6) permitting schemes for swine operations in Arkansas promotes consistency and certainty. The rulemakings do not target small farmers which do not house swine in numbers which meet the medium or large swine CAFO thresholds. Over forty years of regulatory implementation, definition, research, and rulemaking support the threshold numbers.

Response to Individual Comments Against the Rule

35. *Susan Anglin (3rd) suggests that a multiyear study to evaluate impacts of recreation on the Buffalo River, and a potential lottery permitting system for recreational users, is appropriate to protect the Buffalo River.*

The suggestions Ms. Anglin offers are beyond the management powers of ADEQ and the Commission. The National Park Service is developing a new General Management Plan for the Buffalo National River which will address a myriad of matters relating to the Buffalo River, including recreational use and protection of water quality.

36. *Warren Campbell, Newton County Judge, opposes the regulation changes because he believes that current regulations on farms are sufficient, and the Newton County economy is under severe strain.*

The rule change will not place additional regulations on existing farms. It only prohibits future medium or large swine CAFOs. Furthermore, the rule change will protect the tourism economy of Newton County.

37. *Commenter Jason Henson set forth multiple questions pertaining to many subjects. The following is a summary of those points which are not addressed by the responses to comments above:*

a) Does this Commission support use of the Arkansas Phosphorus Index?

b) What scientific data did the Commission use to initiate rulemaking to prohibit only swine CAFOs, and not other forms of CAFOs? Why is the Commission targeting medium and large swine CAFOs which are already heavily regulated?

c) *Does this rulemaking impact CAFOs which utilize waste management practices other than liquid animal waste management?*

d) What alternatives has the Commission considered?

e) When did it become okay in Arkansas for environmental extremists or a state agency to dictate to farmers what types of animals they may raise, and the size of their operation? When did it become okay in Arkansas for rules to be made simply because environmental extremists and urban elitists think they deserve the right to make this area their personal playground and dictate to the rest of us who live here what we can and cannot do?
Mr. Henson's questions are directed at the Commission, but raise several issues which petitioners can respond to. First, in regards to the actions requested of the Commission, including review of the Arkansas Phosphorus index, relevant CAFO data, and alternatives, petitioners state that the public comment period and subsequent Commission review are the appropriate format for the Commission to consider and review such topics. Though the record and individual comment are devoid of information regarding the Arkansas Phosphorus Index, petitioners acknowledge that it is a tool for informing decisions made in nutrient management plans. The index does not address concerns pertaining pathogens, lagoon spills, floods, and the unique challenges posed by karst topography. The public comment record is populated with information demonstrating that the greater weight of the evidence shows that a prohibition on medium or large swine CAFOs in the Buffalo River watershed protects water quality and the environment. The Commission may consider this data and any alternatives found in the record before making a final decision.
Second, this rulemaking prohibits medium or large swine CAFOs, and not other forms of animal agriculture, because the greater weight of the evidence shows that such operations pose the greatest threat to the Buffalo River's water quality. Petitioners do not seek to prohibit, for example, a horse operation of 150 animals which qualifies as a Reg. 5 Confined Animal Operation or a Reg. 6 CAFO, because there is no evidence that such operations now pose a threat to the Buffalo River's water quality. Petitioner's rulemaking is purposefully narrow and defined in order to prohibit only those operations which pose the greatest threat. The record shows that medium or large swine CAFOs pose the greatest threat.
Third, petitioners disagree with Mr. Henson's characterization of this rulemaking as extreme or unheard of within existing regulatory framework. Government bodies regularly use their ability to regulate land use in order to comply with laws such as, in this case, Arkansas's water quality standards, the Clean Water Act, and the Arkansas Water and Air Pollution Control Act. This rulemaking properly invokes the Commission's powers.
The remainder of this comments pertains to matters which are not before the Commission in this rulemaking, including management of Park Service properties, inspection of the C & H Hog Farm, and Commission regulation of other watersheds. This rulemaking pertains only to Confined Swine Operations in the Buffalo River watershed.

38. *Jerry Masterson of the Arkansas Pork Producers Association states that C & H Hog Farm followed the law in obtaining its permit, the Commission should base its decision on science, not FEAR-False Evidence Appearing Real, and that the third party rulemakings are an infringement to a farmer's right to farm. Mr. Masterson's comment contains several other points which are addressed above in the general comments.*
Petitioners disagree with Mr. Masterson's assertions. Mr. Masterson produces no scientific evidence in support of his comment. The greater weight of the scientific evidence submitted in this public comment period shows that prohibiting large swine

operations in the Buffalo River Watershed will protect water quality and public health. This rulemaking is not an infringement on the right to farm, as it is narrowly focused and defined to prohibit only future facilities of a certain type. The Commission is well within its powers of regulating permitting.

39. *Commenter Evan Teague provided a comment with attachments in support of the following points in opposition to the rulemaking:*
a) *Participants in a 1995-2000 study of swine facilities in in the Buffalo River watershed demonstrated an ability to reduce nutrient loading by as much as 90% with best management practices. Participants in this study received EPA's Environmental Excellence Award of 1998. The farms studied were built in the 1970s. Todays farms, and management plans, are much improved.*
b) *C & H Hog Farm is integral to the discussion of this rulemaking, especially in light of the fact the Governor has funded the Big Creek Research Team to study surface and groundwater near C & H Hog Farm. This rulemaking will preempt that work. Prohibitions based on potential or threats is not a scientific approach.*
c) *EPA inspected C & H Hog Farm in April of 2014, and found no violations. Onsite soil samples indicated that soil phosphorus levels below samples used to draft the facility's nutrient management plan. Why would petitioners limit C & H's ability to expand?*
d) *National Park Service Agriculture Special Use Permits allows land application of fertilizer in many fields near the Buffalo River. The very fact that C & H Hog Farm has located near Mt. Judea and landowners are now applying hog manure (organic liquid fertilizer) instead of commercial fertilizer or poultry litter may actually improve the already high, excellent, even pristine, water quality in Big Creek.*

Petitioners have addressed the 1990's studies of hog farms in the Buffalo River watershed above, but again state here that such studies do not appear to review facilities of the size studied in those reports, and again reference the comment of Robert Cross (3rd). This rulemaking does not pertain to the C & H Hog Farm, nor does one future study of the C & H Hog Farm counter the greater weight of the evidence submitted during the record of this rulemaking which demonstrates that limiting the size of swine CAFOs protects water quality in the Buffalo River watershed. Though one individual farm may be in compliance at this time, such compliance does not eliminate the risk of a catastrophic, waterborne pathogen contamination, air emissions, or other cumulative negative environmental impacts of additional Confined Swine Operations this rulemaking prohibits. Petitioners specifically reject any contention that the presence of Confined Swine Operations, and the resulting necessity of land applying millions of gallons of untreated swine waste, can somehow improve water quality. Such a contention is wholly unsupported by the record which shows that the impacts of large swine operations extend beyond matters pertaining to nutrient loading.

COMMENTS RECEIVED FROM THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

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.

The proposed effective date of this rule will be after the Arkansas Pollution Control and Ecology Commission meeting on the rule and ten (10) business days following the filing of the rulemaking decision with the Office of the Secretary of State.

CONTROVERSY: Petitioners expect many comments from residents of the Buffalo National River Watershed, recreational users of the river, and those who own and operate businesses in the watershed. Petitioners expect broad support for the regulation change. Petitioners have not identified a group or individual who intend to oppose this rule change, but do acknowledge that such opposition is possible.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: This is a third-party rulemaking brought by The Ozark Society and the Arkansas Public Policy Panel as allowed under Ark. Code Ann. § 8-4-202(c). The Arkansas Pollution Control and Ecology Commission ("Commission") has the power and duty to adopt rules concerning water pollution, which would include Regulations 5 and 6.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY: Arkansas Department of Environmental Quality
DIVISION: Water
DIVISION DIRECTOR: Ellen Carpenter
CONTACT PERSON: Sam Ledbetter and Ross Noland, representing Third-Party Petitioners the Ozark Society and the Arkansas Public Policy Panel
ADDRESS: 711 W. 3rd St., Little Rock, Arkansas, 72201
PHONE NO.: 501-396-5400 FAX NO.: 501-374-5118 E-MAIL: ross@mcmathlaw.com
NAME OF PRESENTER AT COMMITTEE MEETING: Sam Ledbetter and Ross Noland
PRESENTER E-MAIL: ross@mcmathlaw.com

INSTRUCTIONS

A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

****

1. What is the short title of this rule?

Arkansas Pollution Control and Ecology Commission Regulaton No. 5, Liquid Animal Waste Management Systems.

2. What is the subject of the proposed rule?

A new Chapter 9 to prohibit the Director of the Arkansas Department of Environmental Quality from issuing new permits pursuant to Regulation No. 5 for the operation a certain, defined size of confined animal operations in the Buffalo National River Watershed.

3. Is this rule required to comply with a federal statute, rule, or regulation?

Yes_____ No ___X____

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes_____ No__X__

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes_____ No_____

5. Is this a new rule? Yes_____ No__X__ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes_____ No__X__ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes_X_No ____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Ark. Code Ann. § 8-4-101 et seq.

7. What is the purpose of this proposed rule? Why is it necessary?

The purpose is to prohibit the Director of the Arkansas Department of Environmental Quality from issuing new permits pursuant to Regulation No. 5 for the operation of a certain, defined size of confined animal operations in the Buffalo National River Watershed. It is necessary to protect the existing water quality of the Buffalo National River and the associated tourism and recreational based economy surrounding the river.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

9. Will a public hearing be held on this proposed rule? Yes__X__ No_____
If yes, please complete the following:
Date: June 17, 2014
Time: 6:00, pm
Place: Durand Conference Center, Room A, at North Arkansas College, 303 N. Main St., Harrison, AR 72601.

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

July 1, 2014

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

Ten days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

12. Do you expect this rule to be controversial? Yes_____ No __X___ If yes, please explain.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Petitioners expect many comments from residents of the Buffalo National River Watershed, recreational users of the river, and those who own and operate businesses in the watershed. Petitioners expect broad support for the regulation change. Petitioners have not identified a group or individual who intend to oppose this rule change, but do acknowledge that such opposition is possible.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: Arkansas Department of Environmental Quality
DIVISION: Water
PERSON COMPLETING THIS STATEMENT: Ross Noland, representing Third-Party Petitioners The Ozark Society and the Arkansas Public Policy Panel
ADDRESS: 711 W. 3rd St., Little Rock, Arkansas, 72201
PHONE NO.: 501-396-5400 FAX NO.: 501-374-5118 E-MAIL: ross@mcmathlaw.com

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Arkansas Pollution Control and Ecology Commission Regulaton No. 5, Liquid Animal Waste Management Systems.

1. Does this proposed, amended, or repealed rule have a financial impact?
2. Yes _____ No ____X____

2. Does this proposed, amended, or repealed rule affect small businesses?
   Yes _____ No ____X____

   If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain. *N/A*

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program. *N/A*

Current Fiscal Year		Next Fiscal Year	
General Revenue	_____	General Revenue	_____
Federal Funds	_____	Federal Funds	_____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
Total	_____	Total	_____

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year	Next Fiscal Year
$0	$0

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year	Next Fiscal Year
$0	$0