



February 12, 2014

Ms. Teresa Marks
Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317
Email: marks@adeq.state.ar.us

VIA U.S. MAIL AND EMAIL

Re: C&H Hog Farms, Inc., NPDES Permit Number ARG590001

Dear Director Marks,

We write to put the Arkansas Department of Environmental Quality (“ADEQ”) on notice of new and relevant information concerning C&H Hog Farm, the first industrial-scale hog facility to be located in the watershed of the iconic Buffalo River and the first facility in Arkansas to be granted coverage under the NPDES Concentrated Animal Feeding Operations (“CAFO”) General Permit ARG590000. The new information vindicates public concerns related to the environmental dangers of permitting a factory farm in the Buffalo River watershed, raises new concerns related to C&H’s operations, and justifies a full reopening of C&H’s permit.

The purpose of this letter is not to revisit ADEQ’s inadequate procedures for permitting C&H,¹ but rather to inform ADEQ of new information, summarized below:

- a) In its application to ADEQ for a permit, C&H misrepresented its authority to include Field 5 and portions of Fields 12 and 16 in its Nutrient Management Plan (“NMP”).²
- b) C&H has continued to misrepresent – as recently as January 25, 2014 – that these fields are part of its operation.
- c) C&H appears to have misrepresented to University of Arkansas personnel implementing the state-funded C&H Research Project (the “Big Creek Research Team”) that C&H has authority to apply hog waste to a “New” Field 5 even though that field is not included in C&H’s NMP and cannot be included unless the NMP is amended – a process that requires notice and public comment prior to approval.

¹ For a discussion of these issues, please see our previous letter dated May 15, 2013, available at <http://buffaloriveralliance.org/Resources/Documents/13.05.14%20-%20Ltr%20to%20Marks%20-%20ADEQ%20-%20sans%20attachments.pdf>.

² A letter from the farmers who own Field 5 and the farmers who own portions of Field 12 and 16, dated February 8, 2014, is appended as Attachment A.

- d) As a result of C&H's misrepresentations, the Big Creek Research Team is infringing, or proposing to infringe, on the property rights of the actual owners of the designated lands, and spending thousands of dollars of taxpayer money conducting monitoring and baseline studies on fields that are not a part of C&H's facility.
- e) The Ground Penetrating Radar survey conducted by the Big Creek Research Team has produced evidence of underground features in the Big Creek floodplain that can provide rapid transport of manure contaminated water into adjacent surface waters (rather than slow uptake by crops).

As set forth below, these misrepresentations, new information, and resultant waste of taxpayer dollars legally justify, and indeed require, ADEQ to reopen the C&H permit in its entirety.³

I. BACKGROUND: C&H'S HEAVY RELIANCE ON TAXPAYER MONEY

C&H is contracted with Cargill, one of the world's largest privately-owned businesses, which had sales and other revenues of \$136.7 billion in fiscal year 2013 alone.⁴ Despite this, C&H put taxpayers on the line for \$3.4 million in federal loan guarantees in order to obtain a loan for construction.⁵



Photograph of Sign at C&H

ADEQ granted C&H coverage under NPDES General Permit No. 590001 on August 3, 2012. As is now well known, C&H's permitting flew under the radar and was devoid of public

³ We are aware that ADEQ informed Mr. Henson in a letter dated February 7, 2014, that C&H's request for a revision to its NMP with respect to "Land Application Method" constituted a necessary and substantial change to its NMP, necessitating public review and comment on the issue of the requested revision. See Letter from John Bailey, Permits Branch Manager, ADEQ, to Jason Henson, C&H Hog Farms, Inc. (Feb. 7, 2014), available at http://www.adeq.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_Response%20to%20Request%20for%20Revision_20140207.pdf. As we set forth in this letter, we believe that the misrepresentations and new information at hand necessitate a far broader reopening of the C&H permit.

⁴ Cargill, 2013 Annual Report (2013), available at <http://www.cargill.com/cargill-annual-report-2013/cargill-annual-report-2013.pdf>.

⁵ As set forth in our Complaint in a federal lawsuit against Farm Service Agency ("FSA") and the Small Business Administration, these guarantees might never have been issued had the agencies properly noticed and properly performed the required environmental review, including consulting with the National Park Service with whom FSA shares an office building. The Complaint and its attachments, filed in the Eastern District of Arkansas, is available at <http://buffaloriveralliance.org/Default.aspx?pageId=1558368>.

participation. ADEQ regulations called for no local public notice, even to adjacent landowners. And C&H and Cargill chose not to make the decision to site an industrial hog facility on the banks of Big Creek and seven-tenths of a mile from a local school known to the local community, to neighboring property owners, or to the National Park Service. Even you have admitted that you, the Director of ADEQ, were unaware that C&H had been granted coverage under the state CAFO General Permit until after the fact.⁶

When the public finally found out, concerned citizens across the state expressed outrage that the state had permitted – without notifying the local community or the National Park Service – a 6,500-pig factory farm on porous karst terrain in the watershed of the Buffalo River, the country’s first national river, a state and national treasure, and the focal point of the local tourism economy. Forced to consider many of the concerns that they and ADEQ should have addressed prior to permitting, Cargill and C&H now are relying on taxpayer money to resolve these problems. In October 2013, the state appropriated \$340,510 from Rainy Day Funds for an after-the fact study to determine whether C&H will endanger water quality in Big Creek or the Buffalo National River. ADEQ has the statutory responsibility to issue permits to prevent pollution.⁷ The need for this appropriation reflects ADEQ’s failure to carry out that responsibility. As a result, the public is being forced to pick up the tab for a study that could and should have been performed by C&H and Cargill before the permit application was ever filed and before ADEQ granted any permit.

On top of the \$340,510 from the Legislature, the state appears to be providing an additional \$207,002 through the University of Arkansas’ Department of Agriculture to further assist C&H.⁸ Additionally, according to documents obtained through public record requests, C&H is seeking even more public assistance with the help of University of Arkansas – this time in the form of a grant from the U.S. Department of Agriculture (“USDA”) – to help it meet regulatory requirements.⁹ According to the USDA website, a total of \$300,000 of public money, and up to \$450,000 in special circumstances, is available through this grant program.¹⁰ In short, C&H, contracted with a corporation worth billions, has now cost the Arkansan taxpayers more than half a million dollars and continues to rely on the public fisc to address problems that it and ADEQ should have addressed before the permitting of an industrial-sized hog facility in the karst terrain of the Buffalo River watershed.

In exchange, C&H has created six local jobs.

⁶ See Mike Masterson, *Meanwhile, back at that hog farm*, April 6, 2013, <http://mikemastersonsmessenger.com/meanwhile-back-at-that-hog-farm/>.

⁷ § 8-4-203(a)(1), Ark. Code.

⁸ Email correspondence between Michael Sisco and Andrew Sharpley, *available at* <http://buffaloriveralliance.org/Resources/Documents/CES%20Grant%20Emails%20-%20Sharpley-Sisco.pdf>

⁹ Email correspondence between Karl Vandevender and NRCS Personnel, *available at* <http://buffaloriveralliance.org/Resources/Documents/Email%20Correspondence%20between%20Karl%20Vandevender%20and%20NRCS%20Personnel.pdf>.

¹⁰ USDA Natural Resources Conservation Serv., Environmental Quality Incentives Program, <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/eqip/>

II. MISREPRESENTATIONS BY C&H

Even as C&H relies on taxpayer dollars, it has misrepresented and continues to misrepresent basic facts about its operations to the public. In the NMP that C&H submitted to ADEQ for review and approval, C&H claimed that it had access to 17 fields, comprising 630.7 acres of land, for disposal of swine waste.¹¹ On January 27, 2014, Jason Henson filed C&H's annual report to ADEQ, again maintaining that C&H had access to 630.7 acres of sprayfields.¹² C&H misrepresented this figure at the time it applied for a permit in 2012, and is continuing to misrepresent this figure.

Included in C&H's NMP are "Land Use Contracts" in which the owners of neighboring properties purportedly agreed to allow C&H to apply swine waste to their land. These contracts are signed by Jason Henson. Three in particular are notable for their falsity.

- The Land Use Contract for Field 5 represents to ADEQ that C&H has the permission of the owner Shan (sic) Ricketts to apply hog waste to Field 5 which is described as 23.8 acres of land located in Section 26, Township 15 North, Range 20 West. The land that is depicted as Field 5 on the C&H Field Map actually is owned by Tommie Wheeler and Aliecia Wheeler, husband and wife, by Warranty Deed dated March 19, 1989, as recorded March 20, 1989 at 3:35 p.m. in Deed Book 74-A page 454 of the Newton County, Arkansas records.
- The Land Use Contract for Field 12 represents to ADEQ that C&H has the permission of the owner Barbara Hufley (sic) to apply hog waste to Field 12, which is described as 33.7 acres in Section 35, Township 15 North, Range 20 West. Approximately 9 acres of the land located in Section 35, Township 15 North, Range 20 West which is depicted as Field 12 on the C&H Field Map is owned by Ronnie D. Campbell and Judy A. Campbell, husband and wife, by Warranty Deed dated January 13, 1987, as recorded January 21, 1987 in Deed Book 71-A Page 159 of the Newton County, Arkansas records.
- The Land Use Contract for Field 16 represents to ADEQ that C & H Hog Farm has the permission of Barbara Hufley (sic) to apply hog waste to Field 16 which is described as 79.6 acres in Sections 2 and 3, Township 14 North, Range 20 West. Approximately 25 acres of the land located in Section 2, Township 14 North, Range 20 West which is depicted as Field 16 on the Field Map is owned by Samuel R. Dye and Kimberly D. Dye, husband and wife, by Warranty Deed dated March 29, 2005 as recorded April 5, 2005 at 10:42 a.m. in Deed Book 103-A page 749 of the Newton County, Arkansas records.

¹¹ See C&H Map appended as Attachment B. The original NOI/NMP is available at http://www.adeq.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_NOI_20120625.pdf

¹² The C&H Annual Report is available at http://www.adeq.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_2013%20Annual%20Report_20140127.pdf

Inclusion of these fields among the 630.7 acres of C&H sprayfields was not merely a “mapping discrepancy.”¹³ As described in the letter dated February 8, 2014 (appended as Attachment A), the owners of Field 5 and the owners of portions of Field 12 and 16 were approached by a representative of C&H before the construction of the C&H facility. The C&H representative sought permission to use these landowners’ properties as sprayfields. Each of these owners, who are farmers themselves, declined permission. But as of its January 25, 2014 Annual Report, C&H is continuing to represent to ADEQ that it has these fields available for land application when in fact it does not.¹⁴

Arkansas laws and regulations make knowing misrepresentations unlawful acts,¹⁵ and this agency has “the duty to revoke, modify, or suspend in whole or part” a permit obtained “by misrepresentation or failure to disclose fully all relevant facts.”¹⁶ Misrepresentation is specifically grounds for reopening, modifying or even revoking C&H’s permit.¹⁷ Notably, the federal Clean Water Act provides for punishment by a fine or imprisonment, or both, for knowing misrepresentations in permit applications.¹⁸

III. THE WASTE OF TAXPAYER MONEY AS A CONSEQUENCE OF C&H’S MISREPRESENTATIONS

C&H’s misrepresentations, coupled with C&H’s failure to address these misrepresentations via officially noticed and sanctioned permit amendments and ADEQ’s failure to demand that the record be set straight as soon as it discovered the misrepresentations, has had serious consequences. These consequences implicate private property rights and translate into a waste of the taxpayer dollars appropriated for the C&H Research Project.

A. C&H, and By Extension the Big Creek Research Team, Does Not Have Access to the Lands Identified as Fields 5 and 12

C&H’s misrepresentations have resulted in the waste of the taxpayer dollars funding the C&H Research Project. Yesterday, the University of Arkansas issued a press release announcing

¹³ See Response to Annual Report from Engineering Supervisor, No Discharge Section, February 6, 2014, *available at* http://www.adeg.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590001_Response%20to%202013%20Annual%20Report_20140206.pdf. C&H’s NPDES Permit (which is issued to CAFOs that discharge and are regulated under Arkansas Regulation 6) is not regulated by the No Discharge Section which regulates No Discharge CAFO permits pursuant to Arkansas Regulation 5.

¹⁴ ADEQ was aware of issues related to Field 5 at least as early as September 2013. See ADEQ Compliance Inspection Report, September 10, 2013, ¶ 4, *available at* <http://www.adeg.state.ar.us/ftproot/Pub/WebDatabases/InspectionsOnline/073447-insp.pdf>. The owner of Field 12 complained to ADEQ on October 14, 2013. See Complaint attached to ADEQ Compliance Inspection Report dated January 28, 2014, *available at* <http://www.adeg.state.ar.us/ftproot/Pub/WebDatabases/InspectionsOnline/075752-insp.pdf>

ADEQ was also apparently aware of issues related to Field 16. See *id.*

¹⁵ § 8-4-217(a)(4), Ark. Code.

¹⁶ § 8-4-204(2), Ark. Code.

¹⁷ C&H General Permit ARG590001, Part 6.3.

¹⁸ 33 U.S.C. § 1319(c)(4) (False Statements).

its submission of the C&H Research Project's First Quarterly Report to the Governor.¹⁹ The Quarterly Report indicates that the three fields that are the focus of the C&H Research Project are Fields 1, 5, and 12. The report further states that the University "acquired landowner permission to conduct research and monitoring *on three fields permitted to receive manure.*"²⁰ The University's press release further notes that the Big Creek Research Team "conducted detailed grid soil sampling from three representative farm fields *among those with permits allowing for manure application.*"²¹ Plainly, the University has been seriously misled.

As set forth in Section II above, Field 5 and a portion of Field 12 are not associated with C&H, are not part of the C&H facility, and will not be receiving swine waste. Yet, the Big Creek Research Team's Quarterly Report describes both Fields 5 and 12 as "[m]onitored application fields."²² The Quarterly Report also describes the planned installation of monitoring wells and piezometers on Fields 5 and 12. The maps included in the report show the proposed locations of these sampling devices on lands owned by the Wheelers and the Campbells – not C&H or a property owner contracted with C&H. Apart from concerns about infringement of private property rights, it is a waste of taxpayer money, clearly, to monitor fields that are not part of the C&H operation and will not be receiving C&H waste.

The Big Creek Research Team views its charge as collecting information that "will guide future efforts to monitor surface and subsurface movement *on the farm*" in order "to assess potential impacts *of the C&H Farm* on water quality."²³ As a result of C&H's misrepresentations, however, the taxpayer money funding the Big Creek Research Team is being used instead to inspect, study, monitor, and collect baseline data for fields that are not part of the C&H operation.

B. "New" Field 5 Is Not a Designated C&H Sprayfield

In addition to concerns about potential trespass and the use of taxpayer dollars to study land that C&H misrepresented as its sprayfields, the Big Creek Research Team appears to be using taxpayer dollars to perform work on another property that is confusingly also identified as "Field 5," but that actually is not the Field 5 identified in C&H's NMP.²⁴ This "New" Field 5 lies to the north of Tommie and Alicia Wheeler's property (the Field 5 identified in the NMP).²⁵

This "New" Field 5 is not identified in C&H's NMP, however, and is not a land application field under C&H's permit. If C&H has informed the Big Creek Research Team that

¹⁹ Press release, *Ground-Penetrating Radar, Water-Monitoring Stations Set up by Big Creek Research Team* (Feb. 10, 2014) ("University press release"), <http://newswire.uark.edu/articles/23389/ground-penetrating-radar-water-monitoring-stations-set-up-by-big-creek-research-team>.

²⁰ Big Creek Research and Extension Team, Univ. of Arkansas System Division of Agric., Quarterly Report – October 2013 to December 2013, at 2, http://division.uaex.edu/news_publications/big_creek_quarterly_report_2013.pdf (emphasis added).

²¹ University press release (emphasis added).

²² Quarterly Report at 13.

²³ *Id.* at 2 (emphasis added).

²⁴ Field 5 in the NMP is depicted on page 13 (Map 2: Location of Monitored Fields) of the Quarterly Report.

²⁵ The "New" Field 5 occupies the northernmost trapezoidal shaped area and is directly north of the NMP Field 5 as shown on page 12 of the Quarterly Report (Map 1: Location of the C&H Farm Operation).

this field is part of C&H operations, then that was a misrepresentation.²⁶ As a matter of law, the addition of new application fields to an existing NMP is a substantial change that requires reopening of the NMP, and public notice and comment.²⁷ As that process has not taken place, “New” Field 5 is not currently a part of the C&H facility.

The Big Creek Research Team has spent significant taxpayer dollars studying this misidentified property, including soil testing²⁸ and mapping, and an extensive Ground Penetrating Radar study.²⁹ According to the University’s press release, this study is intended to provide information on how waste flows beneath “the farm.” However, just as it makes little sense for the Big Creek Research Team to focus its study of C&H’s impacts on Fields 5 and 12, which are not part of the C&H operation, so it makes little sense for the Big Creek Research Team to expend substantial taxpayer dollars on radar studies and soil sampling on “New” Field 5 – a field that cannot be made a C&H sprayfield without a reopening of the facility’s permit. Unfortunately, those moneys have already been spent.

C. “New” Field 5 Is Not Suitable For Use as a Land Application Field

Even were C&H to request reopening of its NMP to include “New” Field 5 as a land application field, approval of that request by ADEQ would be an abuse of discretion. The Ground Penetrating Radar survey of “New” Field 5 evidenced not only dissolution features (sinkholes and cavities) common in karst terrain but also gravel lens located approximately 20 inches beneath the soil surface.³⁰

The karst features and the gravel lens uncovered by the GPR survey are probable examples of what the Big Creek Research Team acknowledges are “rapid bypass flow pathways common in karst dominated areas.”³¹ In its press release, a member of the Big Creek Research Team explains how “the karst nature of the underlying bedrock geology” can “enable water to flow rapidly” to underlying layers and from there rapidly into adjacent streams. Dr. John Van Brahana recently made a presentation to the Pollution Control and Ecology Commission, which vividly describes this phenomena and the dangers it presents to both ground and surface waters in the Big Creek Valley.³²

²⁶ The map on page 12 of the Quarterly Report that purports to show the “Location of the C&H Farm” improperly includes this field within C&H boundaries – suggesting that this misrepresentation already has taken place.

²⁷ C&H Permit ARG5900001, Part 3.2.6.2(b) and Part 3.2.6.3(a) (the exception is not applicable).

²⁸ The Quarterly Report is unclear as to which Field 5 actually was soil tested. The report identifies both the Wheeler property and the “New” Field 5 as Field 5 without explanation. It appears the soil sampling was conducted on the “New” Field 5 even though the accompanying map that describes the soil sample grid layout identifies Field 5 as the field belonging to the Wheelers. *Compare* Quarterly Report at 34 (Map 7) *with id.* at 36 (Map 9).

²⁹ Quarterly Report at 26-31.

³⁰ *Id.*

³¹ *Id.* at 10.

³² A video of Dr. Brahana’s presentation to the Commission can be viewed at <http://www.youtube.com/watch?v=OyQMS-NrGSM>. Dr. Brahana’s Powerpoint slides are available at <http://buffaloriveralliance.org/Resources/Documents/CAFO%20in%20Paradise%20Oct%202024%20pdf.pdf>.

The presence of these features renders “New” Field 5 wholly unsuitable for land application of hog manure. Their presence also calls into question the suitability of other fields that lie in the Big Creek or Dry Creek floodplains (Fields 6, 9, 10, 12, and 16) as application fields and is new information requiring reopening of the permit.³³ Dye studies, including from C&H’s waste holding ponds, should be conducted immediately to determine the threat C&H poses to Big Creek, the local community, and the Buffalo River.

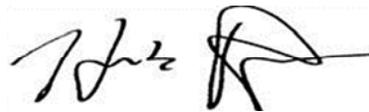
V. CONCLUSION

For all of the reasons described above, we urge ADEQ to reopen C&H’s permit in its entirety and to allow public review and comment. Public involvement and transparency from the start could well have prevented the ill-advised siting of a factory farm in the watershed of the treasured Buffalo River and the subsequent waste of taxpayer dollars to monitor and study the facility. Even at this juncture, though, public involvement can still provide valuable input to help recover the best outcome possible from an undesirable situation. If you have any questions, please do not hesitate to contact any of the undersigned individuals.

Sincerely,



Monica Reimer
Earthjustice
mreimer@earthjustice.org



Hank Bates
Carney Bates Pulliam PLLC
hbates@cbplaw.com



Hannah Chang
Earthjustice
hchang@earthjustice.org



Marianne Engelman Lado
Earthjustice
mengelmanlado@earthjustice.org

While Ground Penetrating Radar identifies subsurface features which create the potential for rapid transport of manure polluted water to surface waters, dye studies can provide conclusive evidence that this rapid transport is actually taking place. Like Dr. Brahana, the Big Creek Research team also recommends dye studies as the source of valuable information. See University of Arkansas Monitoring Proposal, page 1, available at http://posting.arktimes.com/media/pdf/ch_work_plan_9-4_3.pdf (“Other important methods of investigation, such as the use of dye-tracer tests, will provide valuable information on possible rapid by-pass flow pathways common in karst dominated areas. . .”). Dr. Brahana’s presentation to the Commission describes how such studies are conducted.

³³ 40 C.F.R. § 122.62 (incorporated into Arkansas regulations via Ark. Reg. 6.104(A)(3)).

Kevin Cassidy
Earthrise Law Center
cassidy@lclark.edu

On behalf of:

Bob Allen
Arkansas Canoe Club

Jack Stewart
Buffalo River Watershed Alliance

Emily Jones
National Parks Conservation Association

Robert Cross
Ozark Society

Cc:

Lynn Sickel, Chair, Arkansas Pollution Control and Ecology Commission (PC&E Comm'n)
William Thompson, Vice Chair, PC&E Comm'n
Stan Jorgensen, PC&E Comm'n
John Chamberlin, PC&E Comm'n
Joseph Bates, PC&E Comm'n
Lawrence Bengal, PC&E Comm'n
Mike Armstrong, PC&E Comm'n
Darwin Hendrix, PC&E Comm'n
Ann Henry, PC&E Comm'n
Joe Fox, PC&E Comm'n
John Simpson, PC&E Comm'n
Bekki White, PC&E Comm'n
Randy Young, PC&E Comm'n
Kevin Cheri, Superintendent, Buffalo National River

Attachment A

February 8, 2014

Via first-class mail

Dr. Andrew Sharpley
Big Creek Research Team
115 Plant Science Building
University of Arkansas
Fayetteville, Arkansas 72701
sharpley@uark.edu

Re: Access to lands by the Big Creek Research Team

Dear Professor Sharpley,

We are landowners and farmers in Newton County and neighbors of C&H Hog Farms. Our properties have been misrepresented as C&H land application fields. C&H does not have permission to access our lands for purposes of spreading manure. Necessarily, and as a related matter, the Big Creek Research Team you lead does not have permission to access our lands to evaluate the impacts of the C&H operation. We are aware that your team already has accessed Mr. and Mrs. Wheeler's property for soil testing. We request that you and your team immediately stop any and all work on our property and seek our approval before any further access of our lands.

Each of us was approached by a representative of C&H before the construction of the C&H facility requesting permission to use our land as manure sprayfields. Each of us declined permission. Yet, our lands have nevertheless been misrepresented by C&H in its Nutrient Management Plan ("NMP") as manure sprayfields. Specifically, Tommie and Aliecia Wheeler own the property that has been identified as "Field 5" in C&H's NMP. Ronnie Campbell and Judy Cook-Campbell own property that comprises a portion of what has been identified as "Field 12" in C&H's NMP. Finally, Samuel and Kimberly Dye own property that comprises a portion of what has been identified as "Field 16" in C&H's NMP.

It appears that the Arkansas Department of Environmental Quality ("ADEQ") is aware of C&H's misrepresentations. An August 6, 2013 Compliance Inspection Report indicates that "Field 5 identified on the land application maps may be misidentified." An accompanying cover letter from ADEQ to Jason Henson, dated September 10, 2013, notes that "a discrepancy may exist in the numbering of Field #5 and whether the field labeled as 'Field 5' on the WMP [sic] map(s) is covered under a land-use agreement." More recently, a January 28, 2014 Compliance Inspection Report references the fact that Field 5 "has been removed as an application field." The January 28, 2014 Compliance Inspection Report further states that:

- The maps in the Nutrient Management Plan (NMP) do not correctly identify the land application areas. Specifically, there are sections of Fields 12 and 16 that are identified as application areas; however, land use contracts are not available. You

did indicate you were aware of the errors and were in the process of generating new land application maps, and those sites were not being applied to.

Both C&H and ADEQ are aware, apparently, that Fields 5, 12, and 16 are improperly identified as land application fields and that C&H does not have permission to access these lands. C&H has not applied to ADEQ to revise its NMP to remove these fields as required by C&H's permit.

We understand that the Big Creek Research Team nevertheless already has accessed and intends to continue accessing our properties for research and monitoring. Map 3 and Table 1 of the Team's first draft Quarterly Report show that Fields 5 and 12 as identified in C&H's NMP are among the three fields on which the Team intends to conduct its monitoring and research. The Quarterly Report notes that Field 5 was soil sampled on December 31, 2013. The Quarterly Report's outline of the future plan of work identifies, among other things, continued soil sampling and the installation of piezometers on Fields 5 and 12.

We have not granted permission for C&H to use our lands as manure sprayfields, nor have we granted permission for the Big Creek Research Team to access our lands to perform research on the impacts of the C&H facility. We request that your Team immediately cease all activities on our properties and seek our approval before accessing our properties in the future.

Sincerely,

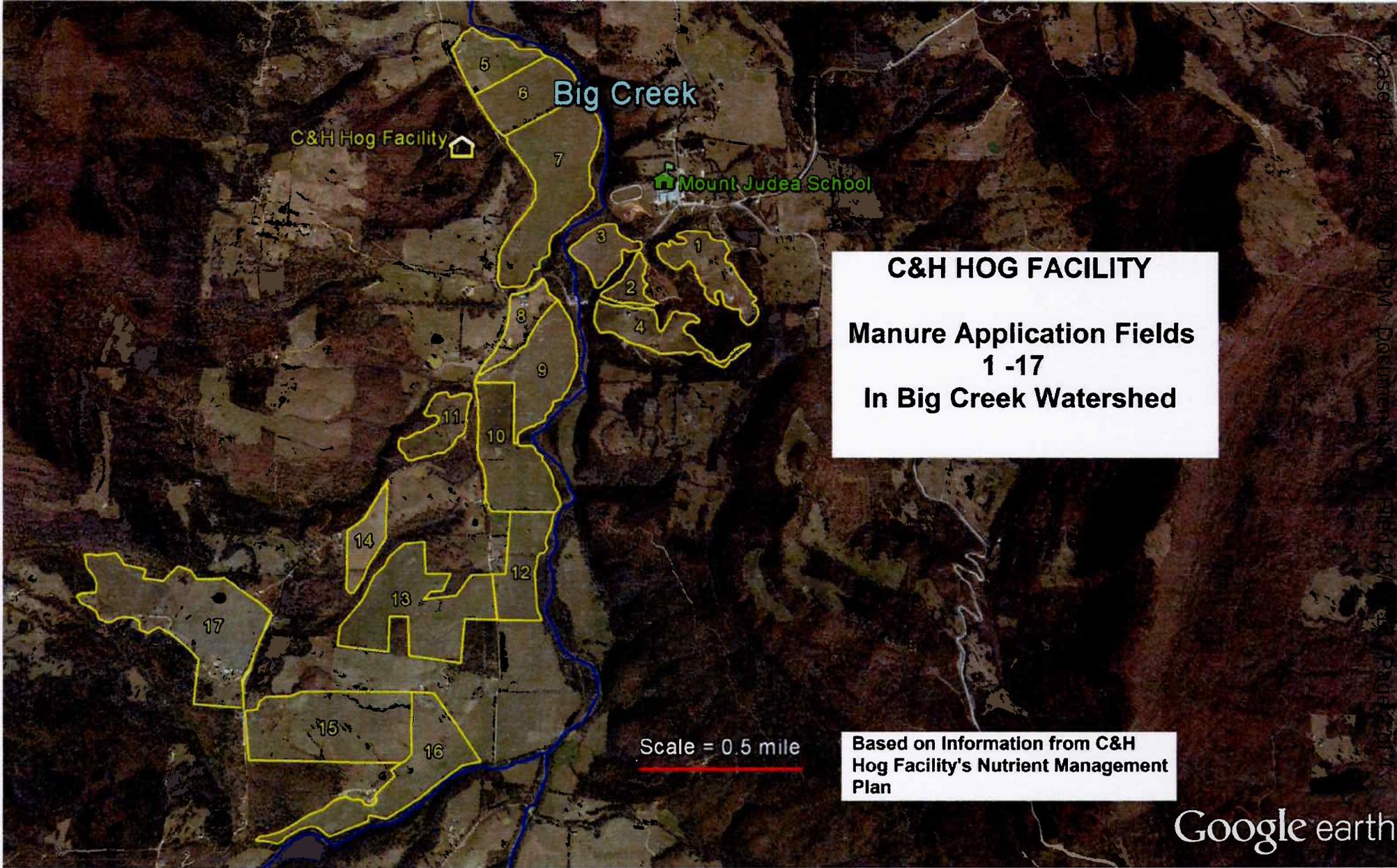

Tommie Wheeler


Ronnie Campbell


Samuel Dye

Cc: Teresa Marks, Director, ADEQ

Attachment B



C&H Hog Facility

Big Creek

Mount Judea School

C&H HOG FACILITY
Manure Application Fields
1 -17
In Big Creek Watershed

Scale = 0.5 mile

Based on Information from C&H
Hog Facility's Nutrient Management
Plan

Google earth

Case 4:13-cv-00150-DPM Document 35 Filed 12/11/14 Page 2 of 4