



Jeremiah W. (Jay) Nixon, Governor

Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

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RE: Comments on Callaway Farrowing, LLC Operating Permit Application

Thank you for your comments concerning the application of Callaway Farrowing, LLC for a Concentrated Animal Feeding Operation (CAFO). The application is for an operating permit for the operation of a new Class IB swine CAFO. This letter contains the Missouri Department of Natural Resources' (Department) response to comments received.

Below are comments or a summary of comments received during the thirty-day neighbor comment period and the Department's responses to the comments. This letter also addresses the concerns identified in a petition that was submitted to the Department. Please note that the Department does not have jurisdiction to address comments regarding "nonwater quality related items" [10 CSR 20-6.020(1)(H)].

Comments were received about the potential for contamination of groundwater, streams, and lakes in the area including the Missouri Department of Conservation's Little Dixie Lake.

Response: CAFOs in Missouri are required to be designed, constructed, operated and maintained as no discharge facilities. They must be designed by a Professional Engineer registered in the state of Missouri in accordance with the Clean Water Commission's CAFO design regulations for the protection of groundwater and surface water, and constructed according to those design plans. The permit Callaway Farrowing, LLC has applied for does not allow discharges to waters of the state for any reason. The swine and manure are to be kept in the confinement buildings and not exposed to precipitation or stormwater runoff. Regulations require the operation to conduct weekly inspections of confinement buildings and manure storage structures for structural integrity and leaks. The proposed facility meets the regulatory setback distances to features such as streams, ponds, wetlands, and wells. The no discharge requirement is the most restrictive effluent limitation that can be placed on a permitted facility and is protective of water quality.

Comments were received regarding the effect the proposed CAFO may have on groundwater levels.

Response: In Missouri, there are no statutes or regulations that specify how much water may be used. Missouri is a riparian water rights state which means all landowners generally have a right to a reasonable use of their water resources.



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Comments were received regarding the monitoring of water quality.

Response: The Department's Water Protection Program periodically tests, assesses, and classifies streams within Missouri. If water quality standards in a stream are being exceeded, it can be placed on the impaired waters 303(d) list. This will identify the section of the stream that is impaired and the contributing pollutant(s) to help state and federal agencies to address the water quality issues of that stream. This list can be accessed online at <http://dnr.mo.gov/env/wpp/waterquality/303d.htm>.

Comments were received about odor and air pollution from the proposed CAFO.

Response: The proposed CAFO has complied with the minimum 2000 foot buffer distance between the nearest confinement building or wastewater storage structure, and existing public building or occupied residence as required under Section 640.710 RSMo. This is the only state law or regulation regarding odor or air pollution for Class IB CAFOs that falls within the scope of this permit action and the jurisdiction of the Clean Water Commission. The Department's Air Pollution Control Program regulates odor. However, with respect to CAFOs, odor regulations apply only to Class IA facilities.

Comments were received about the proposed CAFO land applying manure on other landowner's property.

Response: If manure from a CAFO is applied on land that is not under control of the CAFO owner, whether it is owned, rented, or leased, it is considered a manure transfer. When all manure produced at an operation is transferred to other parties it is called an "export only" operation, which is one method that of manure management that meets regulatory requirements. The CAFO is required to provide the recipients of manure, litter or process wastewater a copy of the current manure analysis, the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS), and to keep records of all manure transfers. These are the only state or federal regulations regarding this method of manure management.

Comments were received regarding the method and timing of land application and the effects on soil compaction as well as regulatory requirements for injection.

Response: There is no regulatory requirement for the minimum depth that manure must be injected. The NMTS that is to be provided to all recipients of manure contains information on calculating agronomic application rates; setback distances from sensitive features, and the timing of manure applications in relation to nutrient availability to plants and soil conditions.

Soil compaction is always a consideration any time heavy equipment is used on agricultural fields. This can be further affected by soil moisture. However, there are no state or federal regulations pertaining to soil compaction. Guidance documents through the University of Missouri (MU) Extension and other sources provide recommendations to help minimize soil compaction. Soil moisture content and weather conditions can also limit the times when land application can occur. State regulation requires all manure storage structures to be designed with a minimum 180 days of storage for this reason. The manure storage structures at Callaway Farrowing, LLC comply with this minimum requirement.

Comments were received regarding the use of nitrification inhibitors during manure applications.

Response: The use of nitrification inhibitors can reduce the loss of nitrogen; but there is no regulation requiring their use for manure applications.

Comments were received about runoff from land application fields getting on to adjoining property including property owned by University of Missouri, Missouri Department of Conservation, and United States Department of Agriculture National Forest Service, and who is responsible for any environmental impacts.

Response: Discharges of manure to waters of the state are not allowed. Any such discharge is subject to compliance and enforcement actions.

If the CAFO is not conducting the application, they are not responsible for misapplication or spills that occur during transportation or application of manure on other people's property. Environmental impacts and any compliance or enforcement actions, including clean up resulting from the discharge of manure is the responsibility of the person conducting the application and/or the landowner receiving the application, pursuant to Missouri Clean Water Law. Any agreement between the CAFO, applicator, or landowner as to who is the responsible property is a civil agreement between those parties.

Comments were received regarding Callaway Farrowing, LLC compliance with their Nutrient Management Plan (NMP).

Response: State and federal regulations require all permitted CAFOs to develop and implement a NMP that addresses nine required elements. Because Callaway Farrowing, LLC is an export only operation, the land application fields and associated information, are not required to be included in the CAFO's NMP. Callaway Farrowing, LLC has developed a NMP that does include proposed land application fields along with application rates and land application setbacks identified on maps. The Department has reviewed the required elements of the NMP and found that it complies with the regulations. Compliance with their NMP is reviewed during inspections.

Comments were received about the spreading agreements and if Callaway Farrowing, LLC is the legal party with the spreading agreements

The spreading agreements submitted with the application are between the landowners and Eichelberger Farms. These agreements were signed prior to the formation of Callaway Farrowing, LLC. There are no state regulations that require CAFOs that transfer manure to obtain spreading agreements and they are not required to be submitted with an operating permit application. It is at the discretion of the involved parties as to whether they wish to update the spreading agreements.

Comments were received about the location of the proposed CAFO due to population density and other animal feeding operations in the area.

Response: The proposed CAFO has complied with the minimum 2000 foot buffer distance between the nearest confinement building or wastewater storage structure, and existing public building or occupied residence as required under Section 640.710 RSMo. The department also reviews the confinement building location for the regulatory requirements of setback distances, geohydrological evaluation if required, and protection from a one hundred year flood event. These are the only regulations regarding location that fall within the scope of this permit action and the jurisdiction of the Clean Water Commission.

Comments were received regarding discharges resulting from spills due to accidents, equipment failure, or carless operation.

Response: Under the MOGS10000 general permit, any discharge is a violation and must be reported to the Department within 24 hours of the operation becoming aware of the discharge. In the event of a discharge, the permit also requires the CAFO to submit to the Department a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge that will ensure that a discharge from this cause does not occur in the future. CAFO operating permits also contain requirements for the operation to conduct weekly inspections of manure storage structures, and daily inspections of water lines. The operation must keep records of these inspections as well. These inspections are intended to help prevent accidents, spills and equipment failure that may result in a discharge. Record keeping is reviewed during inspections and used to determine if the operation is being operated according to permit and regulatory requirements.

Comments were received regarding mortality management at Callaway Farrowing, LLC.

Response: Each operation may choose the method of mortality management used. Acceptable methods include composting, incineration, rendering, and taking mortalities to a permitted landfill. Burial cannot be used for disposal of routine mortalities but may be used in the event of mass mortalities. Burial must be done in accordance with Missouri Department of Agriculture regulations.

Callaway Farrowing LLC indicated that composting would be used for mortalities. High temperatures created during the composting process inhibit insect larvae and eliminate pathogens. Covering the mortalities with sawdust or other material absorbs leachate, controls odors and prevents rodent and pest problems.

Comments were received regarding previous violations of Pork Masters Inc.

Response: Each permitted facility is responsible for complying with regulations and permit requirements. When violations occur, compliance and enforcement actions are taken against the responsible party or parties that caused the violations. Violations at one facility are not considered in the permitting, compliance, or enforcement actions of other facilities.

Comments were received wondering if the engineering plans for the structures, specifically the concrete vaults for manure storage and soil types, would be reviewed.

Response: Engineering plans are not required to be submitted with an operating permit application. In accordance with Chapter 644.051 RSMo. any point source designed to hold, convey, store or treat domestic, agricultural, or industrial process wastewater must be designed by a professional engineer registered in Missouri in accordance with design rules in 10 CSR 20-8.300. A document was submitted with P.E seal, certifying that the project was designed in accordance with the regulation. In accordance with 10 CSR 20-6.300(2)(F)4 the Department does not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the manure system only adherence to the regulation, and issuance of a permit does not include approval of such features.

Comments were received regarding the ability of state to oversee the proposed CAFO.

Response: The Department's Regional Offices conduct regular inspections of permitted animal feeding operations for compliance with regulations and permit requirements. In addition, environmental concerns received by the Department are promptly investigated. All CAFO operating permits require the permittee to submit an annual report to the Department each year.

Comments were received regarding what recourse the State of Missouri has against an LLC in the event of water pollution.

Response: While the formation of an LLC does provide its members some protection from personal liability, it does not absolve the LLC from responsibility of complying with environmental laws and regulations. If Callaway Farrowing, LLC is found to have violated the Missouri Clean Water Law the Department can take compliance and enforcement actions against the LLC.

Comments were received about the passage of Amendment 1 Right to Farm and proposed Environmental Protection Agency (EPA) regulations.

Response: Permitting actions and permit requirements are based upon federal and state statutes and regulations that are effective at the time of permit decisions. If new requirements become effective after permit issuance due to statutory, regulatory or judicial actions, necessary changes to the master general permit will occur at the next renewal or through a modification.

Comments were received that Missouri CAFO regulations are inadequate.

Response: Missouri has statutes that are specific to CAFOs in Chapter 640 RSMo. In addition, there two state regulations specific to CAFOs, 10 CSR 20-6.300 contains permitting and operating requirements, and 10 CSR 20-8.300 contains requirements for the design of manure storage structures. Missouri regulations also incorporate the Environmental Protection Agency's (EPA) CAFO regulations in 40 CFR Part 122 and Part 412. Missouri regulations have several additional requirements that are not included in the EPA regulations, including buffer distance, neighbor notice requirements, and the requirement for all Class I CAFOs to have an operating permit.

Chapter 536 RSMo. outlines the procedure for petitioning for rule changes. Suggestions can be submitted in written form and faxed to (573)-522-9920, emailed to cleanwater@dnr.mo.gov, or mailed to Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102.

Comments were received regarding the effects of out of state ownership.

Response: This issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received regarding the fact that owner of the operation does not live on-site and owners of land application field do not live on the farms where manure is to be land applied.

Response: There are no requirements that the CAFO owner to live on-site. This issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received relating the use of antibiotics at the proposed CAFO and the prevention and spreading of porcine epidemic diarrhea virus (PEDv).

Response: The use of antibiotics and disease prevention at CAFOs does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission. However, it may fall under the jurisdiction of other state or federal agencies.

Many CAFOs develop a biosecurity plan that identifies measures to help prevent the outbreak and spread animal diseases. The Department's Regional Offices also have biosecurity measures for inspectors when visiting CAFOs. There are no state or federal regulations that require CAFOs to develop a biosecurity plan.

Comments were received relating to the manure being land applied containing antibiotics, porcine epidemic diarrhea virus (PEDv) and metals.

Response: Land application is widely used and is the preferred method of disposing of animal manure. Domestic and industrial wastewater and sludge are also commonly land applied. Antibiotics and pathogens such as E. coli, are a concern in both animal and domestic waste. Antibiotics are not listed as water contaminants in 10 CSR 20-7.031 or 40 CFR 412. Therefore, they do not have effluent limitations and are not subject to sampling requirements. Pathogen survival rates vary with the type of pathogen. Exposure to ultraviolet radiation, drying of the manure, and soil remediation helps to reduce pathogen concentrations. Injection or incorporation of manure into the soil can extend pathogen survival rate but reduces the risk of being transported by erosion from the land application field.

Pesticide content of animal manure is dependent on pesticide usage at each individual CAFO. Pesticides can also be land applied as part of crop production.

The amount of metals in manure can vary and is primarily dependent on the metal content in the feed. Research shows the metal content in manure is below the ceiling concentration and loading rates in 40 CFR 503 for land application of sludge.

The Department has developed the Missouri Concentrated Animal Feeding Operations Nutrient Management Technical Standard. This document contains procedures for calculating agronomic application rates and best management practices for land application of manure and is required to be given to all recipients of manure. There are no state or federal regulations that require manure to be tested for antibiotics, pathogens, pesticides, or metal content

Comments were received relating to health issues.

Response: The CWC has developed Water Quality Standards in 10 CSR 20-7.031. This regulation establishes ambient water quality standards for those water contaminants for the protection of groundwater and surface water for the purposes of aquatic life protection, human health protection-fish consumption, drinking water supply, irrigation, livestock and wildlife watering, groundwater, and whole body and secondary contact recreation. The CWC has also developed regulations regarding the design of manure storage structures and permit requirements for the operation of CAFOs that established a no-discharge effluent limitation. Health issues not related to water quality do not fall within the scope of this permit action and are outside the jurisdiction of the CWC.

Comments were received regarding quality of life and community values.

Response: The Department acknowledges the community's concern; however, this issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received that animal feeding operations may have impacts on property values.

Response: The Department acknowledges the community's concern; however, this issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received about adequacy of the county infrastructure to meet the demands of the proposed operation.

Response: The Department acknowledges the community's concern; however, this issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received about an agreement regarding the location of other CAFOs in relation to Pork Masters Inc. that was signed by Pork Masters Inc. owner, Mr. Gary Horstmeier and surrounding landowners.

Response: There are no state or federal regulations for separation distance between animal feeding operations. The agreement signed between Mr. Horstmeier and surrounding neighbors is a civil agreement and does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission.

Comments were received about the spreading agreement with Pork Masters Inc., how this affects the Pork Masters Inc. NMP and the permitting of each operation.

Response: Callaway Farrowing, LLC and Pork Masters Inc. are under different ownership and required to have separate operating permits.

Any manure applied to fields that are in the Pork Masters, Inc. NMP must be conducted in accordance with Pork Masters NMP and the NMTS. The amount of nutrients supplied by all manure applications to fields in the Pork Master NMP shall not exceed the agronomic rate which is to be calculated each year based on the crop grown, realistic yield goal, current manure analysis, and current soil tests. No additional permits are required for this type of operating procedure.

Comments were received regarding DNR policy on allowing operations to get easements of property for confinement buildings.

Response: The Department issues permits that authorize the operation of a facility to those that build, use or operate a point source in accordance with 10 CSR20-6.010 (1)(A). Many industrial facilities, which include CAFOs, do not own the property from which they operate. In these instances, permits are issued to the owner of the operation rather than the owner of property. All permits issued by the Department are required to list a "Continuing Authority", which is the person or entity responsible for environmental matters at the facility if it ceases operation.

Comments were received that the proposed site for the operation and land application fields is marginal land and subject to erosion.

Response: If one acre or more is disturbed during construction of the buildings a land disturbance permit is required. This permit requires the development of a Stormwater Pollution Prevention Plan (SWPPP) that identifies Best Management Practices (BMP) to be used for sediment control. Sediment that crosses property boundaries or enters waters of the state as a result of land disturbance activities is a violation of water quality standards. Land disturbance permit coverage must be maintained until the site has been stabilized according to permit requirements.

Assistance for erosion control measures on agricultural land is available through the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) and through the Department's Soil and Water Conservation Program which is administered by local Soil and Water Conservation Districts.

Comments were received that soils at the proposed site for the operation and land application fields are claypan soils that are poorly drained and should have a National Pollution Discharge Elimination System (NPDES) permit.

Response: Design regulations in 10 CSR 20-8.300 address drainage requirements for manure storage structures when high groundwater tables in the soil are encountered. Because this is an export only operation the land application fields and associated soil information is not required to be in the NMP.

In accordance with 40 CFR 122.23(d), CAFOs that discharge must apply for a NPDES permit. This does not include operations that have the potential to discharge. Missouri regulation requires all Class I CAFOs to have either a NPDES permit or a state no-discharge permit. Callaway Farrowing, LLC. is designed as no-discharge facility so it is at their discretion as to which permit they wish to be covered by.

Comments were received that the Horstmeier farming operation has removed trees and brush from crop field margins.

Response: The Department acknowledges the community's concern; however, this issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission. However, this issue may fall under the jurisdiction USDA, NRCS.

Comments were received about a lagoon at Shryock Farms that receives human waste.

Response: This facility, Missouri Biosolids, LLC, is covered under a different operating permit issued by the Department and is unrelated to the Callaway Farrowing, LLC permitting action.

Comments were made relating to livestock health and treatment of animals.

Response: The Department acknowledges the community's concern; however, this issue does not fall within the scope of this permit action and is outside the jurisdiction of the Clean Water Commission. However, this issue may fall within the jurisdiction of other agencies within state or federal government.

Comments were received that Eichelberger Farms, Inc./Callaway Farrowing, LLC has refused to participate in open forums to educate [the public] on their proposed operation.

Response: Class IB CAFOs are required to notify all adjoining landowners with 3000 feet of confinement buildings or wastewater storage structures of the operation prior to submitting an operating permit application as required by Section 640.710 RSMo. This statute also lists specific information that is to be included in the notification. Callaway Farrowing, LLC has complied with the neighbor notice requirements. It is at the discretion of the CAFO owner to participate in open forums, public meetings, or to provide additional information.

Comments were received that requested the department delay or deny the application and not issue a permit to Callaway Farrowing, LLC.

Response: The Department's responsibility is to protect water quality through the administration of state and federal environmental laws and regulations. As required by state law, the Department must promptly review CAFO general operating permit applications for compliance with laws and regulations and if met, issue the permit within sixty days of receiving a complete application.

Conclusion

The Department has carefully reviewed the Callaway Farrowing, LLC general permit application for a new permit along with the public's comments. The Department is obligated to review each application equally in respect to compliance with regulations set forth by the Clean Water Commission. Based upon this review we have determined that the operating permit application is complete and the operation meets the requirements as outlined in the State's Clean Water Law and regulations. Accordingly, the Department will issue an operating permit to Callaway Farrowing, LLC.

Thank you for taking the time to become involved in our efforts to protect our environment and preserve our water resources. Your comments were fully considered as this matter was reviewed. We hope that this letter was valuable in providing answers to your questions, and if you have further questions, please contact Greg Caldwell at (573) 526-1426 or by mail at P.O. Box 176, Jefferson City MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM



Chris Wieberg, Chief
Operating Permits Section

CW:gcs

c: Callaway Farrowing, LLC
Northeast Regional Office

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