



Jeremiah W. (Jay) Nixon, Governor • Harry D. Bozoian, Director

DEPARTMENT OF NATURAL RESOURCES

dnr.mo.gov

Name
Address
City State Zip

RE: Comments on Trenton Farms RE LLC Operating Permit Application

Dear ,

Thank you for your comments concerning the application of Trenton Farms RE LLC for a Concentrated Animal Feeding Operation (CAFO). The application is for an operating permit for the operation of a new Class IC swine CAFO. This letter contains the comments or a summary of comments received during the thirty-day neighbor comment period and the Missouri Department of Natural Resources' response to comments received. Please note that the department does not have jurisdiction to address comments regarding "non-water quality related items" [10 CSR 20-6.020(1)(H)].

The department reviews all applications for compliance with applicable Missouri statutes and regulations for CAFOs, which are as follows: 10 CSR 20-6.300, 10 CSR 20-8.300, and sections 644.051 and 640.700 to .758, RSMo. In addition, National Pollution Discharge Elimination System (NPDES) permits are reviewed for compliance with federal CAFO regulations in 40 CFR Parts 122 and 412. For deficiencies noted in review of the application, the applicant is provided an opportunity to provide the information. Concurrent with application review, the department conducts a 30-day neighbor comment period in which interested parties may provide written comments to the department for consideration. Upon review of the application Section 644.051, RSMo states "The director shall grant or deny the permit within sixty days after all requirements of the Federal Water Pollution Control Act concerning issuance of permits have been satisfied".

Comments were received about the effects the proposed CAFO may have on groundwater levels.

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

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Comments were received asking about any requirement for the monitoring of water quality.

Response: All CAFO permits have requirements for the operator of the facility to do periodic visual inspections around the facility and or land application sites. These inspection requirements are in place to help maintain the no discharge requirement of the permit. Any deficiencies found during the inspections are to be corrected as soon as practicable; any discharge is to be reported to the department within 24 hours of the operator becoming aware of the discharge. The department does periodic inspections and where this monitoring identifies problems the department would require response activities by the operator. In addition, 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 list, also known as the 303(d) list since it is developed under that section of the federal clean water act. 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>. If the pollutant causing the impairment can be traced back to the CAFO enforcement action could be warranted.

Comments were received about the potential for the proposed CAFO to contaminate groundwater and surface water.

Response: State regulations in 10 CSR 20-6.300 and 10 CSR 20-8.300 require CAFOs to be designed, constructed, operated and maintained as no discharge for the protection of groundwater and surface water. Section 644.051 RSMo. 3a states "Any point source system designed to hold, convey, contain, store or treat domestic, agricultural or industrial process wastewater shall be designed by a professional engineer registered in Missouri in accordance with the commission's design rules." The state operating permit Trenton Farms RE LLC applied for does not allow discharges to waters of the state for any reason. The livestock must not have contact with waters of the state, and precipitation or stormwater exposed to manure, litter, feed, or silage within the production area must be contained. 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 required of a permitted facility and is protective of Water Quality Standards.

Comments were received as to who is responsible for environmental matters at the site if it closes or shuts down.

Response: If a Class I CAFO closes or shuts down, permit coverage must be maintained until all manure storage structures have been properly closed. Once they have been cleaned out and the facility has been properly closed, the CAFO can request termination of the permit. The department will then conduct an inspection of the operation to determine if the permit can be terminated. All permits issued by the Water Protection Program have a Continuing Authority who is responsible for environmental matters at the site in the event the operation goes out of business.

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Comments were received that requested the department deny the application and not issue a permit to Trenton Farms Re 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 operating permit applications for compliance with laws and regulations and if met, issue the permit within sixty days of receiving a complete application.

Comments were received that the land application fields are prone to flooding and there should be alternative fields identified.

Response: There are limitations in the permit with regard to land application during times of saturated or frozen ground so that there is no runoff of pollutants. The facility does have over a year's worth of storage to allow for flexibility when conducting the land application.

Comments were received about the potential for air quality to be impacted by the proposed CAFO.

Response: Class I CAFOs must meet the appropriate buffer distance required in CAFO statutes, as established by the Missouri General Assembly. Section 640.710.2(1) RSMo states "For concentrated animal feeding operations with at least one thousand animal units, one thousand feet." between the nearest confinement building or wastewater storage structure, and existing public building or occupied residence. Trenton Farms RE, LLC has complied with the minimum 1000 foot buffer distance for a Class IC CAFO. This is the only state statute or regulation regarding odor or air pollution for Class IC CAFOs. 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 regarding the neighbor notice/comment period.

Response: All Class I CAFOs are required to meet neighbor notice requirements in Section 640.715.1 RSMo. Trenton Farms RE LLC sent notifications that met the statutory requirements on July 13, 2016, initiating the neighbor notice process. Section 640.715.1(6) RSMo. also requires "the department to accept written comments for thirty days after the receipt of an application for an operating permit." The department received the permit application on July 13, 2016, and the comment period ended on August 31, 2016.

Comments were received that the department should take into account the public opposition to the facility.

Response: The department reviews and considers the content of all comments. While the department received a number of comments opposed to issuing the permit, the department must "grant or deny the permit within sixty days after all requirements of the Federal Water Pollution

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Control Act concerning issuance of permits have been satisfied” under Section 644.051, RSMo; see also 10 CSR 20-6.300(2)(E)6.

Comments were received about runoff from land application fields getting on to adjoining property and who is responsible for any environmental impacts.

Response: Discharges of manure to waters of the state resulting from improper land application of manure are not allowed, and may result in enforcement action. Manure should be land applied in accordance with the operations nutrient management plan (NMP) and the Nutrient Management Technical Standard (NMTS). Failure to follow the NMP and NMTS for the land application of manure may result in enforcement action by the department.

Comments were received regarding discharges resulting from accidents/spills/ equipment failure.

Response: Certain inspections are required to be conducted by the CAFO on a regular basis. Records are required to be kept of these inspections and any deficiencies found during these inspections are to be noted and corrected as soon as possible. These inspections are intended to prevent unauthorized discharges. An unauthorized discharge is a violation and subject to compliance and enforcement actions. The CAFO must report the discharge to the department within 24 hours of becoming aware of the discharge. Individuals may also contact the Northeast Regional Office to report an environmental concern. Reported discharges and environmental concerns are promptly investigated by the department.

Comments were received concerning the CAFO’s water source.

Response: The CAFO’s water source is at the discretion of the CAFO owner. If an existing well is to be used or a new well is constructed it must meet construction requirements and setback distances in 10 CSR 23-3.

The following comments were received regarding corporate/out of state ownership of Trenton Farms RE LLC, that Trenton Farms RE LLC’s owner does not live on-site, and that animal feeding operations may have impacts on residential property values.

Response: The department acknowledges the commenters’ concern; however, these issues do not fall within the scope of this permit action and are outside the scope of the Missouri Clean Water Law.

Comments were made relating to community involvement in the permitting Trenton Farms RE LLC.

Response: The department is required to accept written comments for thirty days after the receipt of application for an operating permit. In addition, the department conducted a public meeting in the area to solicit comments on the application. While the department reviews permit applications and makes its permit decision under the relevant statutes and regulations.

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Citizens may contact their state legislators to enact or change statutes, and may also petition the Missouri Clean Water Commission with regard to rules. Section 536.041 RSMo outlines the procedure for petitioning for rule changes. Suggestions can also 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 relating to the manure being land applied containing antibiotics and pathogens.

Response: Antibiotics and pathogens are a concern in both animal and domestic waste. However, the no discharge requirement in the permit is protective of water quality by allowing the soil to be used as a treatment mechanism and filtering out the contaminants. 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. 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.

Comments were received relating to quality of life and health concerns.

Response: The department acknowledges the commenters' concern; however, the Missouri General Assembly established the current setback distances in statute, and the department does not have the liberty to change them. The Clean Water Commission has developed Water Quality Standards in 10 CSR 20-7.031 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 Clean Water Commission 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. Other health concerns fall outside the scope of this permit action and the Missouri Clean Water Law.

Comments were made relating to health/welfare of wildlife/livestock/endangered species.

Response: The no discharge requirement for CAFOs achieves the Water Quality Standards for the purpose of aquatic life protection, human health protection, and livestock and wildlife protection, among others.

Comments were received about a new application being processed with the original being in the court of appeals.

Response: The Missouri Court of Appeals issued its decision regarding the original application from Trenton Farms on November 22, 2016. The Court upheld the decision of the Commission that Trenton Farms' Permit Application did not meet the requirements of 10 CSR 20-8.300(5)(A) based on a failure to demonstrate that certain areas were protected from inundation due to a 100-year flood, and therefore, Trenton Farms was not entitled to receive a permit for its proposed swine CAFO.

Regarding the continuing authority issue, the Court concluded that the Commission “did not have the authority to simply reinterpret 10 CSR 20-6.010(3) in a way that would effectively drastically modify its terms” by requiring submittal of financial information as part of an application, based on the language of the current rule and its historic implementation.

The second application, which is currently at issue, addressed the flood inundation concern by having an engineering firm do a floodplain modeling survey to determine the 100-year base flood elevation (BFE) for the site. The 1983 FEMA map did not have a BFE listed for this site. The results of the engineer’s study concluded that the BFE at the site was 744.4 feet. The floor of the lowest pit at the facility is at 747.8 feet which is roughly 3.4 feet above the BFE. The engineer’s sealed drawings submitted with the application show the layout of the facility and that the production area is above the BFE and protected from inundation and damage of a 100-year flood. These sealed drawings show compliance with 10 CSR 20-8.300 (5)(A).

Comments were received about the participation of EPA Region 7 in the permitting of Trenton Farms RE, LLC.

Response: EPA provides oversight of the federal NPDES program in Missouri, which the department is authorized to administer through a Memorandum of Agreement. EPA retains the ability to be involved in federal permit activities, but the application submitted by Trenton Farms RE, LLC sought a state operating permit and not an NPDES permit. Because the operation is designed as no discharge, the applicant is not required to get an NPDES permit; therefore the EPA is not involved in the permitting of this facility. The state operating permit is more protective of water quality than an NPDES permit because it does not allow a discharge for any reason, where the NPDES permit allows for a discharge under chronic or catastrophic storm events.

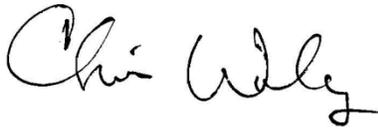
The department has carefully reviewed the Trenton Farms RE LLC second application along with the public’s comments and concerns. Based upon this review we have determined that the operating permit application is complete and that the operation meets the applicable legal requirements as outlined in the Missouri Clean Water Law, Missouri’s regulations found in 10 CSR 20-6.300 and 10 CSR 20-8.300 and the recent decision by the Court of Appeals. Therefore, an operating permit is being issued to Trenton Farms RE LLC.

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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 Mr. Gordon Wray at 573-751-1398 or by mail at P.O. Box 176, Jefferson City MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM

A handwritten signature in black ink that reads "Chris Wieberg". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Chris Wieberg, Chief
Operating Permits Section

CW:gws

c: Trenton Farms RE LLC