



Missouri Department of Natural Resources

PUBLIC NOTICE

Bartlett Country Elevators Variance Request CWC-V-2-14 Bartlett Waverly Large Tank Containment Lafayette County, MO

DATE: December 19, 2014

The Missouri Department of Nature Resources hereby places variance request CWC-V-2-14 on public notice.

On the basis of preliminary staff review and the application of applicable standards and regulations, the Missouri Department of Natural Resources (MDNR), as administrative agent for the Missouri Clean Water Commission, proposes to recommend conditional approval of variance request CWC-V-2-14. The proposed recommendation is tentative pending public comment.

Persons wishing to comment on the proposed variance request are invited to submit comments in writing to: Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102, ATTN: Operating Permits Section/Permit Comments. **Please include the variance request number in all comment letters.**

Comments should be confined to the issues relating to the proposed action and the effect on water quality.

All comments must be received or postmarked by 5:00 p.m. on January 3, 2015. The Department will consider all written comments, including e-mails, faxes and letters, in the formulation of all final determinations regarding the applications. E-mail comments will be accepted at the following address: publicnoticenpdes@dnr.mo.gov.

Bartlett Country Elevators Variance Request CWC-V-2-14
Bartlett Waverly Large Tank Containment
Lafayette County, MO

Bartlett Country Elevators submitted a variance request to the Missouri Department of Natural Resources (Department) on October 31, 2014. The application was submitted pursuant to Section 644.06 1, RSMo. This variance request was submitted in support of a permit renewal application received by the Water Protection Program on September 11, 2012. Bartlett Country Elevators operates a storage tank for 32% liquid nitrogen fertilizer under Missouri State Operating Permit MO-0121266. Upon review of the expired permit, staff determined that this facility is operating under an expired variance and requested that the facility submit the variance application. The previous variance was issued for 5 years on June 2, 2004. The variance was approved once before the 2004 request.

The application requests variance from requirements found in Clean Water Commission regulation 10 CSR 20-8.500 Secondary Containment for Agrichemical Facilities. 10 CSR 20-8.500(7)(A)2. requires that the volume of the secondary containment area, when not protected from precipitation shall have a minimum volume of 125% of the volume of the largest storage container. Due to the location of the facility, between the Missouri River and a railroad track, little area is available to increase secondary containment. The permittee installed a bladder tank within the storage tank in 2004. The bladder tank holds approximately 90% of the volume of the outer tank and therefore, the remaining 10% of the volume of the storage tank can be counted as secondary containment. The Department does not know the present total volume of secondary containment on site.

The Department understands the tank was installed at this location in the mid-1960s. The design regulations first became effective on January 13, 1992. At least two previous variance requests were granted to accommodate continued operation of this facility. Previous variances were granted with special conditions, including:

1. The variance will be granted for no greater than a five year period corresponding to the term of the site permit. That permit should be a "site-specific permit" which will address requirements for groundwater monitoring (should leakage be suspected) and require that the permittee have provisions to transfer liquids from the containment area in case of a leak or failure of the tank.
2. The results of the every other year integrity testing will be submitted to staff for review with the discharge monitoring reports (DMRs) for the facility.

The facility has complied with conditions of the variance and the site-specific permit. The bladder tank was installed as a recommendation of one these inspections.

The variance request is for this state regulation only. No federal regulations apply to secondary containment on fertilizer storage tanks, therefore approval from the U.S. Environmental Protection Agency is not necessary. The Department reviewed and investigated the petition as required by 644.061.4, RSMo and provides the following recommendation.

Department Recommendation

The Department recommends that the Missouri Clean Water Commission (CWC) approve the variance including the previously imposed special conditions as well as a schedule to obtain compliance with the regulation. The CWC is, among other things, legally authorized to grant individual variances from the requirements of the Missouri Clean Water Law (644.061, RSMo) and the regulations adopted under it, unless a variance is prohibited by any federal water pollution control act. The Department considered the various aspects of the law and offers these comments on the corresponding parts:

1. "...if...compliance...will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people ... " (644.061.1, RSMo)

The Department believes that not granting this variance will result in a permit denial that will prevent the facility from continued use of the tank until such time as the applicable regulations can be met. The Department is recommending a variance term that will allow the facility to continue current operation while working to achieve compliance with the secondary containment requirements of 10 CSR 8.500.

2. "...no variance shall be granted where the effect of a variance will permit the continuance of a condition which may unreasonably cause or contribute to adverse health effects upon humans or upon fish or other aquatic life or upon game or other wildlife..." (644.061.1, RSMo)

The Department does not believe that the effect of this variance will permit the continuation of a condition that unreasonably poses a present or potential threat to human health or the environment. The facility has operated in compliance with the conditions of past variances and the site-specific permit. During that time no adverse health effects upon humans, aquatic life or other wildlife were documented. Safeguards such as the internal liner, biennial integrity testing, and possible groundwater monitoring are included as terms of the permit and this variance.

3. "...any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by other law for the commission or maintenance of a nuisance." (644.061.1, RSMo)

The Department does not believe the issuance of this variance relieves Bartlett Country Elevators from any liability imposed by any other provisions of the Missouri Clean Water Law or other statutes of Missouri for the commission or maintenance of a nuisance.

4. "Variances shall be granted for such a period of time and under such terms and conditions as shall be specified in its order... in no event shall the variance be granted for a period of time greater than is reasonably necessary for complying with sections 644.006 to 644.141 or any standard, rule or regulation promulgated pursuant to sections 644.006 to 644.141."

The Department is recommending a variance term that extends through the expiration date of the renewed permit. Based on permit synchronization schedules, the renewed permit will expire March 31, 2019. The Department believes this timeframe provides adequate time to evaluate alternatives and modify the facility to comply with the secondary containment requirements. If an engineering solution cannot be reached, the facility shall reduce the volume of fertilizer stored in the largest tank to meet the 125% secondary containment requirement with the existing infrastructure.

5. “The commission may require the filing of a bond... in an amount determined by the commission to be sufficient to ensure compliance...”(644.061.1, RSMo)

The Department believes the matter will be resolved by either of the alternatives identified in part 4 above, and therefore no bond is necessary.

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Enclosures:

Exhibit 1 – Aerial view of facility

