

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

July 13, 2011

Clean Water Commission Rulemaking – Concentrated Animal Feeding Operations

Issue: The Permits and Engineering Section has prepared a proposed revision to the Missouri Concentrated Animal Feeding Operation (CAFO) permit regulation located at 10 CSR 20-6.300.

The Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System (NPDES) CAFO permit regulation is currently more stringent than Missouri's CAFO regulation. This is primarily a result of the 2008 EPA CAFO rule. EPA requires these deficient areas be updated in Missouri's regulation in order to continue to issue NPDES permits to CAFOs. If this rulemaking is not undertaken it will be difficult to issue a general NPDES permit to CAFOs after the current general permit expires. In addition, we may not have the required regulatory authority, as per 640.016.1 RSMO, substantiating the conditions and requirements within our permits. This statutory provision prohibits the Department from placing requirements, conditions, and restrictions in permits which are not prescribed or authorized by state regulation or statute.

Background: This rulemaking is being proposed to align the state's regulation with current United States Environmental Protection Agency rules. The U.S. EPA finalized revisions to the National Pollutant Discharge Elimination System permit regulations for CAFOs in December 2008. The 2008 EPA rule action was in direct response to a Federal Court of Appeals decision in *Waterkeeper Alliance et al. v. EPA* (2nd Cir. 2005). In this decision, the court vacated and remanded several critical provisions of EPA's 2003 CAFO final rule. The EPA's 2008 final rule now contains provisions and standards that are more stringent than Missouri's current regulation. The EPA requires that deficient areas in state rules be updated in order to maintain state delegation for the NPDES program. If the rulemaking is not undertaken the Department will lack regulatory authority to include the appropriate conditions and requirements in CAFO permits.

Listed below are five general areas that have been identified for revision in Missouri's rules and are being proposed for this rulemaking:

1. Revisions to regulatory definitions along with other clarifications within the state CAFO rule;
2. Revision of rule language to mirror EPA's procedure of how to "designate" smaller Animal Feeding Operations (AFO) as a CAFO.

3. Clarification and revision of the NPDES “duty to apply” requirement for permits at a CAFO.
4. Revision to the permit issuance process which EPA has developed for issuing a CAFO NPDES general permit. This will include how a NMP will be reviewed and processed by the Department for a NPDES permit.
5. Revision to the Effluent Limitation Guidelines (ELG) for CAFOs.

Program staff has facilitated seven stakeholder workgroup meetings in 2008 and 2009 and two workgroup meetings in 2010 to discuss the EPA rules and seek public input on the proposed rulemaking. Stakeholders that attended these meetings included private individuals and companies currently regulated by the program, commodity and environmental groups, elected officials, and EPA permitting staff.

To the best of our knowledge all stakeholders support retaining delegated authority from EPA at the state level. The state’s CAFO permitting program is valuable in protecting Missouri’s water resources and in many cases is more stringent than the federal rules.

Recommended Action: Information only

Attachments:

- Rulemaking Report
- Proposed Rule Amendment, 10 CSR 20-6.300
- Public Fiscal Notes

Affected Rule: Amendment to 10 CSR 20-6.300 Concentrated Animal Feeding Operations (CAFO)

1. What is the purpose of this rulemaking?

The U.S. Environmental Protection Agency (EPA) finalized revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations (CAFOs) in December 2008. The 2008 EPA rule action was in direct response to the Second Circuit Court of Appeals decision in *Waterkeeper Alliance et al. v. EPA* (2nd Cir. 2005). In this decision, the 2nd Circuit Court vacated and remanded several critical provisions of the EPA 2003 CAFO final rule. Most notable, the court found that EPA's 2003 provision regarding the "duty to apply" for a permit, which EPA had based solely on a CAFOs potential to discharge was invalid. The federal Clean Water Act subjects actual discharges to permitting requirements not potential discharges.

EPA's 2008 final rule contains provisions and standards that are more stringent than Missouri's current regulations. EPA requires that deficient areas in state rules be updated in order to maintain state delegation for the NPDES program. If the rulemaking is not undertaken the Missouri Department of Natural Resources (Department) will lack regulatory authority to include the appropriate conditions and requirements in CAFO permits.

In order to align state regulation with federal regulation and provide additional clarification to existing state CAFO rules, Missouri must make certain changes and adopt certain provisions of the 2008 EPA final rule. Listed below are five general areas that have been identified for revision in Missouri's rules and are proposed for this rulemaking;

1. Revisions to regulatory definitions along with other clarifications within the state CAFO rule.
2. Revision of rule language to mirror EPA's procedure of how to "designate" smaller Animal Feeding Operations (AFO) as a CAFO.
3. Clarification and revision of the NPDES "duty to apply" requirement for permits at CAFOs
4. Revision to the permit issuance process which EPA developed for issuing a CAFO NPDES general permit. This will include how a Nutrient Management Plan (NMP) will be reviewed and processed by the Department for a NPDES permit.
5. Revision to the Effluent Limitation Guidelines (ELG) for CAFOs.

The Department recognizes that stakeholders support retaining delegated authority at the state level. The CAFO permitting program is valuable to protect Missouri's water resources, and, additionally is more stringent than federal rules. While the federal duty to apply provision no longer obligates all CAFO to obtain an NPDES permit, this rulemaking will continue the previous state requirement that all CAFOs in Missouri maintain an operating permit with the Department.

2. Why is the rulemaking being proposed now?

This rulemaking is being sought to ensure state CAFO rules are consistent with EPA NPDES regulation. EPA's 2008 Final CAFO rule included several changes that have impacted the states permitting framework for CAFOs. Rulemaking is warranted at this time to ensure that permits are issued in compliance with Clean Water Act and NPDES regulations.

In addition, on November 20, 2009 the US EPA Office of Water released a letter directed to EPA Regional Offices regarding CAFO program implementation. In this letter EPA makes clear their expectation that delegated States continue to make progress on updating their CAFO rules.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

The proposed rulemaking will incorporate by reference portions of the EPA regulation at 40 CFR Part 122 and 40 CFR Part 412, effective July 1, 2010.

4. Is a Regulatory Impact Report required for this rulemaking?

No. This rule will adopt newly promulgated federal requirements found in the 2008 EPA CAFO rule and clarify or revise existing state rules to provide a uniform and standardized permitting framework.

5. What authority does the Department have to carry out this rulemaking?

The Department has authority under Section 644.026, RSMo Supp. 2000 powers and duties of commission--rules, procedure. The Clean Water Commission must assure enforcement and implementation of the powers and duties of Sections 644.006 to 644.141 and any required of the state by any federal water pollution control act, and, as the commission deems necessary to prevent, control and abate existing or potential pollution

Authority is also found in Section 640.710. RSMo - The Department shall promulgate rules regulating the establishment, permitting, design, construction, operation and management of Class I facilities. The Department shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation and management of any Class I facility.

6. What does the rulemaking require and how does it produce benefits?

The proposed rulemaking will include the following five (5) general components;

- a) Revisions to regulatory definitions along with other clarifications within the state CAFO rule.
- b) Revisions of rule language to mirror EPA's procedure of how to "designate" a smaller AFO as a CAFO.
- c) Clarification and revision of the NPDES "duty to apply" requirement for permits at CAFOs.
- d) Revision to the permit issuance process which EPA developed for issuing a CAFO NPDES general permit. This will include how a Nutrient Management Plan (NMP) will be reviewed and processed by the Department for a NPDES permit.
- e) Revision of the Effluent Limitation Guidelines (ELG) for CAFOs.

The proposed rulemaking will be beneficial to the Department's mission in protecting water quality in the state. The Department's water pollution permitting program is valuable in protecting Missouri's

water resources. In addition, this rulemaking will continue to require all CAFOs to maintain coverage under a state operating permit. By doing so, the state will maintain a level of oversight that ensures that CAFOs implement improved nutrient management requirements, phosphorus controls and, other best management practices which will provide better animal waste management throughout the state.

7. Who is most likely affected by the rulemaking?

This proposed rulemaking will likely affect all permit holders in some manner. For many the impact will be small, for others it will be significant. Currently, the Department has approximately 570 operating permits belonging to animal feeding operations across the state. In particular though, it will be those CAFO operations that obtain coverage under the NPDES permit that may be affected by an increased regulatory burden. The additional burden will be associated with maintaining the NPDES permit in accordance with the new EPA rule due to the new provisions for modifying and updating operating permits and nutrient management plans.

8. What impact will the rulemaking have on small businesses? (A small business is defined by statute as a for-profit enterprise with fewer than 100 full or part-time employees.)

The Department has prepared a small business evaluation to show possible impacts due to the fact that over 90 percent of all existing CAFO permits are issued to individuals or companies that would be classified as a small business.

This rulemaking is not expected to have a substantial impact on small businesses as a whole. It is believed that many farming operations (i.e. small businesses) have already taken appropriate measures to comply with the new requirements, while others may not be subject to additional costs due to specific business strategies.

9. What are the probable costs for the Department or any other public agency in the implementation and enforcement of the rulemaking?

This rulemaking will add additional costs and staffing burden to the Department's Water Protection Program. Though the Department already regulates CAFOs, the changes EPA made to the NPDES program will significantly increase the administrative burden on the Water Protection Program. The actual total costs will be difficult to determine, however, the increase in the total cost to issue and maintain an NPDES CAFO permit under this rule may double.

10. What is the anticipated effect of the rulemaking on state revenue?

The Department's water pollution permit fees expired on December 31, 2010. While the rulemaking may result in fewer permits issued, state revenue from permit fee income will not change (neither increase nor decrease) as fees are no longer collected. The Department will incur additional costs from the rulemaking. The rulemaking is expected to double the number of staff hours necessary to process and issue a CAFO NPDES permit.

11. Who was/will be involved in developing the rulemaking?

The Water Pollution Control Branch staff has facilitated seven stakeholder workgroup meetings in 2008 and 2009 and two workgroup meetings in 2010 to seek public input on the proposed rulemaking. Stakeholders that attended these meetings include individuals and/or companies currently regulated by the program, commodity and environmental groups, elected officials, EPA permitting and enforcement staff, Department permitting and enforcement staff as well as Department management. A partial list of these organizations is shown below. The Missouri Clean Water Commission will have final approval on the proposed rulemaking.

Missouri Pork Association	Missouri Coalition for the Environment
Missouri Farm Bureau	Washington University Law Clinic
The Poultry Federation	USDA-Natural Resources Conservation Service
Missouri Agribusiness Association	USDA-Farm Service Agency
Missouri Dairy Association	US EPA Region 7
Missouri Cattlemen's Association	MU Commercial Agriculture Program
Premium Standard Farms	Cargill Pork
MFA	Moark

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

As stated in number 11 above, between 2008 and 2010 the Department held nine separate rulemaking workgroup meetings on this rulemaking. This workgroup was made up of state agencies, producers, environmental groups and other stakeholders. The workgroup met to evaluate the proposed rule components. The Department has worked internally as well as with the Interagency Coordination Team in preparing a draft rulemaking. Furthermore, Department staff have been proactive in educating permit holders of pending revisions to state regulations. This has included mailed correspondence, speaking engagements at several farmer producer meetings and conferences, along with eight regionally scheduled permittee educational sessions in March 2010.

Meeting announcements and with other pertinent rule development information is posted on a website dedicated to this rulemaking project. This webpage can be found at:
<http://www.dnr.mo.gov/env/wpp/cafo/index.html>

13. Who may I contact to either ask questions or provide input on this rulemaking?

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14. What are the expected dates for the comment period and public hearing?

The Department anticipates a publication of the proposed amendment in the *Missouri Register* August 15, 2011. A public hearing is scheduled for November 2, 2011.

*Rulemaking schedules are subject to progress on the rulemaking, internal coordination, the Department decisions, necessary and appropriate actions, or SOS publication schedules.

Meetings with Stakeholders	September 28, 2010 October 26, 2010
Signed Finding of Necessity	July 6, 2011 CWC Meeting
Interagency Coordination	January 18, 2011 – Feb., 17, 2011
Filing with Small Business Regulatory Fairness	July 14, 2011 (may be filed July 7 th through July 15 th)
Board, & Joint Committee on Administrative Rules & Secretary of State	July 14, 2011 may be filed July 7 th through July 15 th)
Publication in the <i>Missouri Register</i>	August 15, 2011
Public Comment Period	August 15, 2011 thru <i>Nov., 16, 2011</i>
Public Hearing	November 2, 2011
<i>Actual scheduled dates for this rulemaking are in italic bold:</i>	
<i>End of Comment</i>	<i>November 9, 2011</i>
<i>End of Comment</i>	<i>November 16, 2011</i>
Response to Comment & Adoption	January 4, 2012
<i>File Order of Rulemaking with JCAR</i>	<i>File Jan. 6</i>
<i>File Order of Rulemaking with JCAR</i>	<i>File Jan. 12</i>
<i>Note 60 Days from Nov. 9 = Jan. 6 (Jan. 8 Sun.)</i>	<i>File 5th thru 6th</i>
<i>Note 60 Days from Nov. 16 = Jan. 13 (Jan. 15 Sun.)</i>	<i>File 5th thru 13</i>
<i>Note End of Comment Nov. 9, 2011 + 90 = Feb. 7, 2011</i>	<i>File Feb. 6 through 7</i>
<i>Note End of Comment Nov. 16, 2011 + 90 days = Feb., 14</i>	<i>File Feb. 13 through 14</i>
<i>Order of Rulemaking Filed with Secretary of State</i>	<i>February 7, 2012</i>
<i>Order of Rulemaking Filed with Secretary of State</i>	<i>February 13, 2012</i>
Order of Rulemaking Published in <i>Missouri Register</i>	March 15, 2012

Rule Published in *Code of State Regulations*

March 30, 2012

Rule Effective

April 30, 2012

Title 10 – DEPARTMENT OF NATURAL RESOURCES

Division 20 – Clean Water Commission

Chapter 6 – Permits

PROPOSED AMENDMENT

10 CSR 20-6.300 Concentrated Animal Feeding Operations

PURPOSE: This rule sets forth the permitting and other requirements for concentrated animal feeding operations. Minimum federal requirements, as of July 1, 2009, are incorporated and additional state requirements are included to provide increased clarity and environmental protection. In addition to this permitting rule, concentrated animal feeding operations must also follow the manure storage design standard rule found in 10 CSR 20-8.300.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Definitions.

(A) Definitions as set forth in [the Missouri Clean Water Law, Chapter 644, Concentrated Animal Feeding Operation (Hog Bill) Section 640.700–640.758, RSMo, and] 10 CSR 20-2.010 shall apply to [those] the terms when used in this rule **unless otherwise defined in subsection (B) below.**

(B) Other applicable definitions are incorporated as follows:

1. Abandoned property—Real property previously used for, or which has the potential to be used for, agricultural purposes which has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure, and has been vacant for a period of not less than three (3) years;

1.[2.] Animal—Domestic animals, fowls, or other types of livestock except for aquatic animals;

2. [3.] Animal unit—A unit of measurement to compare various animal types at an [concentrated] animal feeding operation. One animal unit equals the following: 1.0 beef cow or feeder, cow/calf pair, veal calf, or dairy heifer [or slaughter animal]; 0.5 horse; 0.7 mature dairy cow; 2.5 swine weighing over 55 pounds; 10 [nursery pigs] swine weighing less than 55 pounds; 10 sheep, lamb, or meat and dairy goats; 30 chicken laying hens or broilers with a wet handling system; [60] 82 chicken laying hens without a wet handling system [layer pullets]; 55 turkeys in grow-out phase; 125 chicken broilers, chicken pullets, or turkey poults in brood phase without a wet handling system; [100 broiler chickens or an equivalent animal unit. The total animal units at each operating location are determined by adding the animal units for each animal type];

3. [4.] Animal unit equivalent—Any [equivalent] unique animal type, not listed, that has a similar manure characteristic [and weight that has a similar amount of manure produced] as one of the listed animal unit categories. **The department shall make the determination of the an animal unit equivalent based upon manure characteristics that include manure volume and nutrient concentration;** [This also applies to other animal types which are not specifically listed];

4. Animal Feeding Operation (AFO) - A lot, building or complex at an operating location where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and, crops, vegetation, forage growth, or post-harvest residues cannot be sustained over at least fifty percent (50%) of the animal confinement area within the normal crop growing season;

5. Catastrophic storm event—A precipitation event of twenty-four (24)-hour duration that exceeds the twenty-five (25)-year, twenty-four (24)-hour storm event as defined by the most recent publication of the National Weather Service Climate Atlas;

6. Chronic [storm] weather event— is a series of rainfall and/or precipitation events and conditions that preclude land application and dewatering practices at properly maintained wastewater storage structures. The chronic weather event will be based upon an evaluation of the 1 in 10 year return rainfall frequency over a 10-day, 120-day, and 365-day

operating period. The University of Missouri's Missouri Climate Center will determine when a chronic weather event is occurring for any given county in the state; [A precipitation event with a duration of more than twenty-four (24) hours that exceeds the one-in-ten (1-in-10) year return frequency. Includes ten (10)-year, ten (10)-day storm, ten (10)-year three hundred sixty-five (365)-day storm and the ten (10)-year, three hundred sixty-five (365)-day rainfall minus evaporation or equivalent rainfall events as defined by the National Oceanic and Atmospheric Administration;]

7. Class I and Class II operation— An AFO or CAFO's class size is based on the operating level in animal units at one operating location. When determining whether an AFO or CAFO is a Class I or Class II size operation, all animal units within an individual animal species are summed together. Once a CAFO becomes a Class I operation, the animal units of all confined animals at the operating location are summed to determine whether the operation is Class IA, IB, or IC. Operations that are smaller than the Class II category are considered unclassified. The Class categories, sorted by animal type, are presented in the following chart: [The class is a size category based on the design capacity of animal units or animal unit equivalents at an operating location. Class I includes the subsets of Class IA, IB, and IC. Operations that are smaller than the Class II category are unclassified. Class by animal units is presented in the following chart:]

8. Concentrated Animal Feeding Operation (CAFO) - an AFO that meets one (1) of the following criteria:

A) Class I operation;

B) Class II operation where either one of the following conditions are met:

i) Pollutants are discharged directly into waters of the state through a man-made ditch, flush system, or other similar man-made device; or

ii) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the production area or otherwise come into contact with the animals confined in the operation; or

C) An unclassified operation that is designated as a CAFO in accordance with subsection (2)(D) of this rule.

[8. Concentrated animal feeding operation (CAFO)—An operating location where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period, and a ground cover of vegetation is not sustained over at least fifty percent (50%) of the animal confinement area and meets one (1) of the following criteria:

A. Class I operation; or

B. Class II operation that discharges through a man-made conveyance or where pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the operation or otherwise come into direct contact with the animals confined in the operation;]

9. Critical watersheds—defined as the following:

A. Watersheds for public drinking water lakes (L1 lakes defined in 10 CSR 20-7.031 and identified in Table G);

B. Watersheds located upstream away from the dam from all drinking water intake structures on lakes including the watershed of Table Rock Lake;

C. Areas in the watershed and within five (5) miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi Rivers; and

D. Watersheds of the Current (headwaters to Northern Ripley County Line), Eleven Point (headwaters to Hwy. 142), and Jacks Fork (headwaters to mouth) Rivers;

10. Discharge or Propose to Discharge - A CAFO is said to “propose to discharge” when it is designed, constructed, operated, or maintained such that a discharge of process wastewater will occur. Propose to discharge does not include CAFOs that simply have the “potential to discharge”. A CAFO that “discharges” could include both those that continuously discharge process wastewater to waters of the state, as well as those that may only have intermittent and sporadic discharge. Discharges of agricultural stormwater are a non-point source and therefore not included within this definition.

11. Dry Process Waste - A process waste mixture which may include manure, litter or compost (including bedding, compost, or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids;

[10. Dry litter—A waste management system where the animals are confined on a floor that is covered with wood chips, rice hulls, or similar materials and the resulting litter/manure mixture has at least fifty percent (50%) dry matter and is not exposed to precipitation or storm water runoff during storage;]

[11. Facility—Any Class IA concentrated animal feeding operation which uses a flush system;]

12. Flush system—Any animal waste moving or removing system utilizing the force of periodic liquid flushing as the primary [moving and removal force] mechanism for removing manure from animal containment buildings, as opposed to a primarily mechanical or automatic device. This definition does not include confinement buildings that utilize deep or shallow under-floor pits with pull plug devices;

13. Land application area—Agricultural land which is under the **operational** control of the CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied;

[14. *Man-made conveyance—A device constructed by man and used for the purpose of transporting wastes, wastewater, or storm water into waters of the state. This includes, but is not limited to, ditches, pipes, gutters, emergency overflow structures, grass waterways, constructed wetland treatment systems, overland flow treatment systems, or similar systems. It also includes the improper land application so as to allow runoff of applied process wastewater during land application;*]

[15. *Mechanical or automatic device—A method or mechanical invention to remove animal wastes, such as screw augers, scrapers, etc., that does not use liquid as the primary removal force;*]

14. [16.] Multi-year phosphorus application—Phosphorus applied to a field in excess of the crop needs for that year. [In] **When multi-year phosphorus applications are followed**, no additional manure, litter, or process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal **or until subsequent soil testing allows for nitrogen based rates**;

[17. *No-discharge operation—An operation designed, constructed and operated to meet each of the following conditions:*

A. *To hold or irrigate, or otherwise dispose without discharge to surface or subsurface waters of the state, all manure, litter, or process wastewater and associated storm water flows except for discharges that are caused by catastrophic storm events;*

B. *Manure, litter, or process wastewater are not land applied during frozen, snow covered, or saturated soil conditions;*
and

C. *Basins are sealed in accordance with 10 CSR 20-8;*]

15. **No-discharge operation – A CAFO is considered no-discharge if the operation is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge to waters of the state. A discharge of agricultural stormwater is a non-point source and therefore not included within this definition;**

16 [18.] Occupied residence—A **residential** dwelling [*place for people*] which is inhabited at least fifty percent (50%) of the year;

[19. *One-in-ten (1-in-10) year precipitation—The wettest precipitation expected once every ten (10) years for a three hundred sixty-five (365)-day period, based on at least thirty (30) years of records from the National Climatic Data Center;*]

17 [20.] Operating location—**For purposes of determining CAFO classification, an operating location includes all [All] contiguous lands owned, operated, or controlled by one (1) person or by two (2) or more persons jointly or as tenants in common or noncontiguous lands if they use a common area for the [disposal] land application of wastes. State and county roads are not considered property boundaries for purposes of this rule. Two or more animal feeding operations under a common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area for the land application of wastes;**

18 [21.] Overflow—The discharge of [*manure or*] process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure;

19 [22.] Process wastewater— **Water which carries or contains manure, including manure commingled with litter, compost or other animal waste materials. Also includes water directly [Water directly or indirectly] used in the operation of the CAFO for any or all of the following: spillage or overflow from confined animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; and water resulting from the washing, or spray cooling of confined animals; [direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding;]**

20 [23.] Production area—[*That part of an operation that*] **The non-vegetated portions of an operation were manure, litter or process wastewater from the AFO is generated, stored and/or managed. The production area** includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed **and silage silos, pads and bunkers**[*silage bunkers, and bedding materials*]. The waste containment area includes, but is not limited to, settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing operation, and any area used in the storage, [*handling*,] treatment, or disposal of **animal mortalities**;

21 [24.] Public building—A building open to and used routinely by the public for public purposes;

22 [25.] Vegetated buffer—A narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters;

23 [26.] Wet handling system—Wet handling system is the handling of **process wastewater that contains more than seventy five percent (75%) moisture content or has free draining liquids.** [*manure that contains less than fifty percent (50%) dry matter or has free draining liquids. Wet handling includes that storage of dry manure or dry litter so that it is exposed to rainfall or storm water runoff.* Wet] A wet handling system [also] includes, **but is not limited to, lagoons, pits, tanks** all gravity outfall lines, recycle pump stations, recycle force mains, and appurtenances.

(2) General.

(A) All persons who build, erect, alter, replace, operate, use, or maintain operations for generation, storage, treatment, use, or disposal of manure, litter, or process wastewater from concentrated animal feeding operations shall obtain permits as follows:

1. Class I concentrated animal feeding operations;
2. Class II concentrated animal feeding operations which discharge through a manmade conveyance; or
3. An operation designated on a case-by-case basis under subsection (2)(C) of this rule.

(B) Exemptions.

1. Small scale pilot projects or demonstration projects for beneficial use that do not exceed a period of one (1) year may be exempted by written project approval from the permitting authority, provided the facilities are three hundred (300) animal units or smaller. The department may extend the permit exemption for up to one (1) additional year after review of the first year's results. A permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the facility intends to continue operation.

2. A permit is not required for animal feeding operations of less than three hundred (300) animal units when the operation utilizes applicable best management practices approved by the department.

3. Permits are not required for the composting of dead animals at Class IC or smaller operations when—

A. The compost operation and raw materials storage are located in enclosed buildings with impermeable floors; or

B. The unroofed compost area covers less than five thousand (5,000) square feet and is underlain with an impermeable floor, and raw materials are covered by a tarp or impermeable cover.

4. Permits are not required for storage buildings for dry litter, compost, or similar materials, if the storage structure is roofed and has impermeable floors.

5. Minor piping changes and other minor modifications as determined by the department.

6. Livestock markets are exempt from the provisions of 10 CSR 20-6.300(3)(A)–(B), 10 CSR 20-6.300(7), 10 CSR 20-6.300(3)(H)1.–2., 10 CSR 20-6.300(4)(D)–(E).

7. Agricultural storm water discharges and return flows from irrigated agriculture. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered an agricultural storm water discharge when manure, litter, or process wastewater is applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

(C) Nothing shall prevent the department from taking reasonable action to assure that operations do not discharge into waters of the state, including requiring permits or letters of approval for operations normally exempted under this rule. Permits or letters of approval may be required where necessary to protect the environment, including the following:

1. To correct noncompliance;

2. When the department has determined that construction or operating practices are not adequate to ensure the operation will be operated in a no-discharge manner;

3. The department determines from an on-site visit that permits are necessary to require special design, operating controls or monitoring and reporting requirements of site-specific conditions such as groundwater effects, surface runoff, waste or wastewater characteristics, topography, geology, watershed factors or land application loading rates;

4. When an unauthorized discharge has occurred or has the potential to occur;

5. When a discharge results in violation of water quality standards under 10 CSR 20-7.031; or

6. Other relevant factors.

(D) Critical Watersheds.

1. Class IA concentrated animal feeding operations (both new and those operations that wish to expand to Class IA size) are prohibited from the identified watersheds of the Current, Jacks Fork and Eleven Point Rivers (10 CSR 20-6.300(1)(B)9.D.).

2. *Class IA concentrated animal feeding operations, located in critical watersheds defined in 10 CSR 20-6.300(1)(B)9.A.-C. shall submit a spill prevention plan for department approval. New and expanding operations shall submit with the permit application.]*

(2) Applicability and Application for Coverage.

(A) Scope of Rule. This rule applies solely to manure, litter, and/or process wastewater management systems at Concentrated Animal Feeding Operations (CAFOs). CAFOs are point sources, and are subject to both state and federal National Pollutant Discharge Elimination System (NPDES) regulation in accordance with sections 640.710 and 644.026 RSMo.

(B) Permit Coverage Required - Any CAFO owner or operator that proposes the construction, modification, expansion and/or operation of a manure, litter, and/or process wastewater management system at a Concentrated Animal Feeding Operation shall obtain one or more of the following permits listed below unless otherwise exempted under section (2)(E) of this rule.

1. **Construction Permit** – All existing or proposed Class I CAFOs must obtain a construction permit prior to the initial construction, installation, modification, or expansion of a manure, litter, or process wastewater management system.

2. **NPDES Permit** – Owners or operators of Class I CAFOs that discharge or propose to discharge must obtain a state NPDES operating permit before any discharge occurs. Class I CAFOs that do not discharge or propose to discharge may also apply for coverage under a NPDES permit.

3. **State No-Discharge Permit** – Owners or operators of Class I CAFOs that do not intend to discharge or propose to discharge and do not apply for coverage under a state NPDES permit, shall obtain and maintain coverage under a State No-Discharge operating permit. Compliance with a State No-Discharge permit will provide a CAFO “No-Discharge Certification” in accordance with 40 CFR 122.23(i) and (j) July 1, 2009, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

(C) Voluntary Permit Coverage - Any owner or operator of a Class II or smaller AFO, which is not otherwise designated as a CAFO, may on their own behalf elect to be covered under one of the above three permits. Any person making such an election will be subject to all terms and conditions of the permit unless and until permit coverage is terminated.

(D) CAFO Designation at Class II size AFOs -

1. The department may designate an AFO as a concentrated animal feeding operation upon determining that it is a significant contributor of pollutants to waters of the state. In making such designation, the department shall consider the following factors:

- A. The size of the AFO and the amount of wastes reaching waters of the state;
- B. The location of the AFO relative to waters of the state;
- C. The means of conveyance of animal wastes and process waste into waters of the state;
- D. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste into waters of the state; and
- E. Other relevant factors.

2. No AFO shall be designated under this section unless the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated as a concentrated animal feeding operation. In addition, no AFO with number of animals below a Class II size operation may be designated as a CAFO unless:

- A. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- B. Pollutants are discharged directly into the waters of the state which originate outside of the AFO and pass over, across, or through the AFO, or otherwise come into direct contact with the animals confined in the operation.

(E) Exemptions.

1. Pilot projects or demonstration projects for beneficial use may receive construction permit exemption by written approval from the department. An operating permit application shall be submitted at least ninety (90) days prior to end of the demonstration period if the operation intends to continue use of the pilot project.

2. Construction permits are not required for the construction or alteration of mortality composters, or other storage buildings for dry process waste when the compost operation or dry process waste storage is located within a roofed building and the storage floor complies with the requirements in 10 CSR 20-8.300.

3. Construction permits are not required for minor piping changes and other modifications. Minor modifications include, but are not limited to, small sections of buried wastewater lines, normal repair or replacement of existing wastewater lines, installation of manholes, wet wells, and other changes that do not significantly impact the normal operation of the waste management system.

4. In accordance with 640.758 RSMo, livestock markets and auctions are exempt from the provisions of 10 CSR 20-6.300(3)(B)–(C), 10 CSR 20-6.300(3)(H), 10 CSR 20-6.300(7).

5. Permits are not required for nonpoint source discharges, agricultural storm water discharges, and return flows from irrigated agriculture. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered an agricultural storm water discharge when manure, litter, or process wastewater is applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

6. If a construction permit is waived by the department, or for some other reason not required, part or all of the information necessary to issue a construction permit may be required with the application for the operating permit.

(F) Construction and Operating Permit Applications – This section describes the application process and requirements for CAFO construction and general NPDES and State No-Discharge operating permits.

1. An application for a construction permit shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300. The construction application shall also include the application for an operating permit along with all applicable permit fees. The department may require other information as necessary to determine compliance with the Missouri Clean Water Law and these regulations.

2. An operating permit application for an AFO that did not previously have a construction permit or Letter of Approval (LOA) shall include the permit application documents required within the CAFO manure storage design rule at 10 CSR 20-8.300. The operating permit application shall include both a construction and operating permit fee as the department will conduct an as-built review of the construction and engineering documents.

3. All construction permit applications shall require engineering documents along with a professional engineer's seal affixed to such documents in accordance with 10 CSR 20-8.300.

4. The department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the manure management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

5. An application for a construction permit should be submitted to the department at least one hundred eighty (180) days in advance of the date on which the proposed construction will begin. A separate application for each operating location must be submitted to the department.

6. When an application is submitted incomplete and missing key components, the department may return the entire permit application back to the applicant for re-submittal. When an application is submitted sufficiently complete, but is otherwise deficient, the applicant and the applicant's engineer will be notified of the deficiency and will be provided time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected identified deficiencies.

7. Applicants who fail to correct deficiencies and/or fail to satisfy all department comments after two (2) certified department comment letters shall have the application returned as incomplete and the construction and operating permit fees shall be forfeited. The department will grant reasonable time extensions when the applicant requests additional time to respond to department comments, however, such requests must be in writing and must occur within the timeframe set by the department.

8. When the department has received all documents and information necessary for a properly completed construction permit application, including appropriate permit fees, the department will, upon completion of the review and approval of said documents, act in one of the following ways:

A. For an operation seeking coverage under the State No-Discharge general operating permit the department will issue both the construction and the State No-Discharge general operating permit concurrently;

B. For an operation seeking coverage under the NPDES permit the department will post for 15 days on the department's webpage a notice of the pending CAFO NPDES permit. The notice will include an announcement of the opportunity for public review and comment on a CAFO's nutrient management plan and draft NPDES permit. The public may request, in writing, a 15 day extension to the public notice period for a permit. The department will post the public notice of a pending CAFO NPDES permit and consider all comments before issuing the construction and operating permit. The construction and NPDES operating permit will be issued concurrently. A public notice will not be required prior to the issuance of a construction permit for a manure or wastewater pipeline or land application system.

9) Construction permits shall expire one (1) year from the date of issuance unless the permittee applies for an extension. The department shall extend construction permits only one time for a period not to exceed the originally issued effective period. An applicant requesting extension shall show that there have been no substantial changes in the original project. Extension requests should be received thirty (30) days prior to permit expiration.

10) When a construction permit is issued for a project for which the construction period is known in advance to require longer than one (1) year from the date of issuance, the department may issue a permit allowing a period of time greater than one (1) year upon the applicant showing that the period of time is necessary and that no substantial changes in the project will be made without first notifying the department. If there are substantial changes, the department may require the applicant to apply for a new construction permit.

11) Upon completion of construction and prior to the expiration date of the construction permit, the owner or operator for which a construction permit was issued shall submit in writing on forms approved by the department the engineering certification of the newly constructed systems. Engineering certification will document that the project was completed in accordance with approved plans and specifications. If changes were made during construction, as-built drawings of said changes shall be submitted with the certification in accordance with 10 CSR 20-8.300.

(3) *[Permits]* Permit Requirements.

(A) General Requirements.

1. Permits required by this regulation shall be issued in accordance with 10 CSR 20-6.010, 10 CSR 20-6.011, 10 CSR 20-6.015, 10 CSR 20-6.020, and 10 CSR 20-6.200.

2. Applications for permits shall include a professional engineer's seal affixed to all engineering plans and engineering certifications.

3. As the department does not examine structural features of design or the efficiency of mechanical equipment, the issuance of a permit does not include approval of these features.

4. Prior to the transfer of manure, litter, or process wastewater to other persons, the permittee will provide the recipient the most current nutrient analysis.

5. Mortalities must not be disposed of in any liquid manure or process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface waters.

1. All permits required by this rule shall be issued in accordance with applicable provisions of 10 CSR 20-6.010, 10 CSR 20-6.011, 10 CSR 20-6.020 and 10 CSR 20-8.300. When the state regulations referenced within these rules are found to be incompatible with the requirements of 10 CSR 20-6.300, the provisions of 10 CSR 20-6.300 will take precedence.

2. For NPDES permits only - In addition to the state requirements found in this rule, all CAFO NPDES permits shall be issued in compliance with applicable federal regulation as set forth in 40 CFR 122.42(e) and 40 CFR 412 Subpart A through Subpart D, July 1, 2009, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954. This provision does not include any subsequent amendments or additions.

3. Permits shall allow the operation of the CAFO waste management system as submitted in the permit application and associated engineering plans. Permits shall allow the CAFO to operate at an animal unit level not to exceed its respective Class size (i.e. Class IC or IB). When determining the appropriate classification, a rolling 12 month average method will be used. The rolling 12 month average shall at no time exceed the upper threshold limit of the CAFO's designated class size. CAFOs may change animal numbers and weights within its respective class size; however, such changes must not subsequently violate applicable effluent limitations found in section (4) of this rule or adversely impact the storage and handling capacities of the waste management system.

4. Permits shall require the CAFO operator to provide the recipient of any manure, litter, or process wastewater transfer, a current manure nutrient analysis.

5. Mortalities must not be disposed of in any liquid manure or process wastewater system, unless specifically designed to handle them. Mortalities must be handled in such a way as to prevent the discharge of pollutants to surface waters and prevent the creation of a public health hazard.

(B) Buffer Distances.

1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal confinement *[containment]* building, feedlot pen, or waste holding structure and any existing public building or occupied residence. The public building or occupied residence will be considered existing if it is being used prior to the start of the neighbor notice requirements of subsection (B) of this section or thirty (30) days prior to construction permit application, whichever is later. Buffer distances shall be—

A. One thousand feet (1000') for concentrated animal feeding operations between 1,000 and 2,999 animal units (Class IC operations);

B. Two thousand feet (2,000') for concentrated animal feeding operations between 3,000 and 6,999 animal units (Class IB operations); and

C. Three thousand feet (3,000') for concentrated animal feeding operations equal to or greater than 7,000 animal units (Class IA).

2. *[Existing]* A concentrated animal feeding operation **and any future modification or expansion of a CAFO is [are]** exempt from buffer distance requirements *[if they]* **when it meets all of the following criteria:**

A. *[Have been]* **The CAFO was** in existence prior to June 25, 1996;

B. *[Have been in continuous operation since June 25, 1996. Operations are continuous provided they have not been left vacant for longer than any eighteen (18)-month period at any one (1) time; and]* **The CAFO has been under continuous operating permit coverage since June 25, 1996; and**

C. The *[operation]* CAFO does not expand into a larger classification size.

3. When existing animal feeding operations or concentrated animal feeding operations expand to a larger class size, the setback distances shall not apply to the portion of the operation in existence as of June 25, 1996.

4. Buffer distances are not applicable to residences owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained from the owner of that residence. When shorter setback distances are proposed by the operation and allowed by the department, the written agreement for a shorter setback distance shall be recorded with the county recorder and filed in the chain of title for the property of the land owner agreeing to the shorter *[distance]* buffer distance.

5. **The department may, upon review of the information contained in the construction application, including, but not limited to, the prevailing winds, topography and other local environmental factors, authorize a buffer distance which is less than the distance prescribed in this rule. The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county governing body rejects the department's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.**

(C) Neighbor Notice Requirements for Construction Permits.

1. Prior to filing an application for a construction permit with the department **for a new or expanding [, all]** Class I concentrated animal feeding operation*[s shall provide]* the following information **shall be provided by way of a letter with signature confirmation** to all the parties listed in paragraph (3)(C)2. of this section:

A. The number of animals designed for the operation;

B. *[The]* **A brief summary of the waste handling plan and general layout of the operation;**

C. The location and number of acres of the operation;

D. Name, address, and telephone number of registered agent **or owner;**

E. Notice that the **operation and the** department will accept written comments for a thirty (30)-day period. The thirty (30)-day notice period will begin on the day the construction permit application is received by the department;

[F. The scheduled date the operation intends to submit a construction permit to the department; and]

F.*[G.]* The address of the department office receiving comments.

2. The neighbor notice shall be provided to the following:

A. The department's Water *[Pollution Control]* **Protection Program;**

B. The county governing body; and

C. All adjoining owners of property located within one and one-half (1 1/2) times the buffer distances specified in subsection (3)(B). Distances are to be measured from the nearest animal confinement building or waste holding basin to the adjoining property line.

3. The construction permit applicant shall submit to the department proof the above notification has been sent. **An acceptable form of proof includes copies of mail delivery confirmation receipts, return receipts, or other similar documentation.**

4. All concentrated animal feeding operations shall submit *[to the department a map, approximate scale of one inch equals one thousand feet (1" = 1,000'), or a two (2) times enlarged copy of a United States Geological Survey 7.5 minute quadrangle map.]*, **as part of the construction or operating permit application, an aerial and a topographic map of the production area.** The maps shall show the operation layout, buffer distances, **property lines**, and property owners within one and one-half (1 1/2) times the buffer distance.

5. The neighbor notice will expire if a construction permit application has not been received by the department within twelve (12) months of initiating the neighbor notice requirements.

(D) Inspections. **This section pertains to all CAFO operating permits.**

1. Permits shall require the following minimum visual inspections **at the production area:**

A. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the process wastewater storage;

B. Daily inspection of water lines, *[including drinking water or cooling water lines;]* **including wastewater, drinking water, and cooling water lines that can be visually observed within the production area. The inspection of the drinking water and cooling water lines shall be limited to the lines that possess the ability to leak or drain to wastewater storage structures or may come in contact with any process waste;**

C. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection will note the level in liquid impoundments as indicated by the depth marker; and

D. Periodically conduct leak inspections on equipment used for land application of manure or process wastewater.

2. **Permits shall require the following minimum visual inspections at the land application area:**

A. **Monitoring of the perimeter of the application fields to ensure that applied wastewater does not run off the fields where applied;**

B. **Monitor for drifting from spray irrigation;**

C. **Hourly inspections of aboveground irrigation pipelines when in use.**

3. [2.] Permits shall require that any deficiencies found as a result of inspections be corrected as soon as possible.

(E) Record Keeping. **This section pertains to all CAFO operating permits. All records required by this section shall be made available to the department upon request.**

1. Permits shall require that the permittee maintain the following records for the production area for a period of five (5) years from the date they are created:

A. A copy of *[the]* **construction and operating permits, permit applications, and *[including]* the nutrient management plan;**

B. **A once per week record *[Records]* documenting the daily visual inspections performed as required in 10 CSR 20-6.300(3)(D) above;**

C. Weekly records of the depth of the manure and process wastewater in the liquid impoundments as indicated by the depth marker;

D. Records documenting any actions taken to correct deficiencies. Deficiencies not corrected within thirty (30) days shall be accompanied by an explanation of the factors preventing immediate correction;

E. Records of mortalities management and practices used by the operation which verify compliance with 10 CSR 20-6.300(3)(A)5. above;

F. Records of the date, time, and estimated volume of any overflow;

G. Records of the date, recipient name and address, and approximate amount of manure, litter, or process wastewater transferred to another person.

2. Permits shall require that the permittee maintain the following records for the land application area for a period of five (5) years from the date they are created:

A. Expected crop yields;

B. The date(s) manure, litter, or process wastewater is applied to each field;

C. Weather conditions at time of application and for twenty-four (24) hours prior to and following application;

D. Test methods used to sample and analyze manure, litter, process wastewater, and soil;

E. Results from manure, litter, process wastewater, and soil sampling;

F. Explanation of the basis for determining manure application rates, as provided in the technical standards;

G. Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

H. Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;

I. The method used to apply the manure, litter, or process wastewater;

J. Date(s) of manure application equipment inspection.

(F) Annual Reports. **This section pertains to NPDES operating permits.**

1. NPDES permits shall require the submission of an annual report that includes:

A. The number and type of animals confined at the operation;

B. Estimated amount of total manure, litter, and process wastewater generated by the operation in the previous twelve (12) months;

C. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the operation in the previous twelve (12) months;

D. Total number of acres for land application covered by the nutrient management plan;

E. Total number of acres under control of the operation that were used for land application of manure, litter, and process wastewater in the previous twelve (12) months;

F. Summary of all manure, litter, and process wastewater discharges from the production area to waters of the state that have occurred in the previous twelve (12) months, including date, time, and approximate volume;

G. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

(G) Best Management Practices (BMPs)—Each CAFO subject to this section that land applies manure, litter, or process wastewater must do so in accordance with the following practices:

1. **Nutrient Management Plan** - Permits shall require a nutrient management plan be developed and implemented according to the requirements of 10 CSR 20-6.300(5). The plan must also incorporate the requirements of paragraphs (3)(G)2. **below. New CAFOs that apply for a construction permit must develop and submit a nutrient management plan with the construction permit application, unless otherwise stipulated by the department. The CAFO must begin implementation of the plan upon the date of operating permit coverage. [and (3)(G)3. based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters. New CAFOs that apply for a construction permit after February 26, 2009, must have a nutrient management plan that complies with this paragraph developed and implemented upon the date of operating permit coverage. All other CAFOs that obtain operating permit coverage must have their nutrient management plans developed and implemented prior to renewal of the permit.**

2. *Manure, litter, or process wastewater shall not be land applied closer than one hundred feet (100') from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the operation complies with one (1) of the following compliance alternatives:*

A. *For surface and subsurface applications, a setback consisting of a thirty-five foot (35') wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited; or*

B. *The CAFO demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot (100') setback.]*

[3. *Application rates for manure,]* **2. Manure, litter, and [other] process wastewater applied to the land application area must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the CAFO Nutrient Management Technical Standard (NMTS) [technical standards for nutrient management] established by the Clean Water Commission. [Such technical standards for nutrient management shall—] The Nutrient Management Technical Standard is incorporated by reference into this rule and shall be reviewed, and updated if necessary, once every five years. This standard shall include, but not be limited to, the following -**

A. **Include a field-specific assessment of the potential for [nitrogen and] phosphorus transport from the field to surface waters, and address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters; and**

B. **Include appropriate flexibilities for any CAFO to implement nutrient management practices to comply with the technical standards, including consideration of multi-year phosphorus application on fields that do not have a high potential for phosphorus runoff to surface water, phased implementation of phosphorus-based nutrient management, and other components, as determined appropriate by the department. [director.]**

C. **Require that manure be analyzed a minimum of once annually for nitrogen and phosphorus content, and soil be analyzed a minimum of once every five (5) years for phosphorus content. The results of these analyses are to be used in determining application rates for manure, litter, and other process wastewater.**

D. **Include conditions that will ensure manure, litter, and process wastewater applications are conducted in a manner that prevents surface runoff of process wastewater beyond the edge of the field. Such measures will include, but not be limited to, restricting the timing, soil conditions and placement of manure during land application.**

E. **Include appropriate land application setbacks that at a minimum require manure, litter, and process wastewater be land applied not closer than one hundred feet (100') from any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters unless the operation complies with one (1) of the following compliance alternatives:**

(I) For surface and subsurface applications, a setback consisting of a thirty-five foot (35') wide vegetated buffer where applications of manure, litter, or process wastewater are prohibited; or

(II) The CAFO demonstrates that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the one hundred foot (100') setback.

(H) Class IA Requirements. **The section pertains to Class IA CAFOs only.**

1. The owner or operator of any Class IA concentrated animal feeding operation [*utilizing flush wet handling systems*] **with a wet handling system which also utilizes a flush system** shall employ one (1) or more persons who shall visually inspect the **wet handling system**[*animal waste wet handling facility and holding basins*]. Visual inspections shall be made at least every twelve (12) hours with a deviation from the twelve (12)-hour requirement not to exceed three (3) hours. The inspections shall focus on the structural integrity of the collection system and containment structures along with any unauthorized discharges from the flush and wet handling systems. Records shall be maintained by the facility for a minimum of three (3) years on forms approved by the department.

2. Any unauthorized discharges [*by*] **that cross the property line of the facility, or enters the waters of the state from a Class IA concentrated animal feeding operation with a wet handling system that also utilizes a flush system, [from a flush or wet handling system that cross the property line of the facility, or enter the waters of the state,]** shall be reported to the department and to all adjoining property owners of the facility within twenty-four (24) hours.

3. **Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall receive at least one on-site inspection by the department each quarter.**

4. **All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have a secondary containment structure(s) or earthen dam(s). The containment structure(s) or earthen dam(s) shall be sized to contain a minimum volume equal to the maximum capacity of flushing in any twenty-four (24)-hour period from all gravity outfall lines, recycle pump stations, and recycle force mains.**

5. **All Class IA concentrated animal feeding operations with a wet handling system which also utilizes a flush system shall have an electronic or mechanical shut-off in the event of pipe stoppage or backflow. For new facilities, the shut-off shall be included as part of the construction permit application**

6. **Class IA concentrated animal feeding operations (both new and those operations that wish to expand to Class IA size) are prohibited from the watersheds of the Current, Jacks Fork and Eleven Point Rivers as described in 10 CSR 20-6.300(1)(B)9.D.**

[3. *Class IA concentrated animal feeding operations that use wet handling systems shall be required to comply with the following minimum permit related requirements:*

A. Applications for permits shall include a list of mailing addresses for all adjacent property owners and applicable planning and zoning agencies;

B. Permittee shall retain the services of a full-time resident engineer during lagoon seal construction and compaction tests for inspection and certification;

C. Barrel tests to determine lagoon leakage rates shall be conducted on all newly constructed lagoons which have not yet received operating permits. Barrel tests shall be conducted in accordance with 10 CSR 20-8.020(16)(B);

D. The department shall be notified at least seven (7) days prior to the compaction and barrel testing dates to allow observation of the tests;

E. Permits shall require operational monitoring and reporting, including—

(I) Nutrient levels in wastewater that is land applied;

(II) Information on land application sites, including dates wastewater or manure is applied, application rates per acre, application rates per hour, field slopes, locations, vegetation grown, crop yields, soil moisture, and rainfall received;

(III) Water level measurements in storage structures;

(IV) Operation of land application equipment; and

(V) Other pertinent information;

F. Permits shall require environmental monitoring and reporting, including—

(I) Nitrogen, phosphorus, and potassium levels in soils;

(II) Wastewater discharges that occur;

(III) Storm water runoff from the property;

(IV) In-stream monitoring of any waters of the state that adjoin or pass through the property; and

(V) Groundwater monitoring wells, if determined to be necessary; and

G. Permits shall include a reopener clause to allow modification of the permit should future environmental data determine such is needed.]

(4) Design Standards and Effluent Limitations.

(A) Effluent Limitations applicable to all Class I CAFOs.

1. New and expanding CAFOs that apply for a construction permit after the effective date of 10 CSR 20-8.300 shall have manure, litter and process wastewater management systems designed and constructed in accordance with the CAFO manure storage design standard rule 10 CSR 20-8.300.

2. Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7).

3. For NPDES Permits only – CAFOs shall comply with effluent limitations as set forth in 40 CFR Part 412, Subpart A through Subpart D, July 1, 2009, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954 and are hereby incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

4. There shall be no-discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the land application of manure, litter or process wastewater to land application areas under the operational control of the CAFO, except where it is an agricultural storm water discharge. When manure, litter, or process wastewater has been land applied in accordance with (3)(G) of this rule, a precipitation related discharge of manure, litter or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

5. A chronic weather event is a series of wet weather events and conditions that can delay planting, harvesting, and prevent land application and dewatering practices at wastewater storage structures. When wastewater storage structures are in danger of an overflow due to a chronic weather event, CAFO owners shall take reasonable steps to lower the liquid level in the structure through land application, or other suitable means, to prevent overflow from the storage structure. Reasonable steps may include, but are not limited to, following the department's current guidance on "Wet Weather Management Practices for CAFOs". These practices shall be designed specifically to protect water quality during wet weather periods. The University of Missouri's Missouri Climate Center will determine, within a reasonable timeframe, when a chronic weather event is occurring for any given county in Missouri. The Climate Center's determination will be based upon an evaluation of the 1 in 10 year return rainfall frequency over a 10-day, 120-day, and 365-day operating period.

(B) Additional Limitations for State No-Discharge permits at Class I CAFOs. A State No-Discharge permit will provide a CAFO "No-Discharge Certification" in accordance with 40 CFR 122.23(i).

1. There shall be no discharge of manure, litter, or process wastewater into waters of the state from the production area. CAFOs will be considered no-discharge when the operation is designed, constructed, operated, and maintained in a manner such that the CAFO does not discharge.

2. If at any time a CAFO's waste management system is found to be "proposing to discharge", the department may revoke the CAFO's No-Discharge Permit and require the CAFO to seek coverage under a NPDES permit.

3. If a discharge occurs at a CAFO with a State No-Discharge permit, the owner or operator must submit to the department for review and approval the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and 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.

4. When a discharge occurs at a CAFO, the CAFO will be allowed to maintain coverage under the No-Discharge permit when the following two conditions are met:

A. The department determines that the specific cause has been appropriately corrected so that the CAFO does not "discharge or propose to discharge", and

B. The CAFO has not had two discharges at a given site for the same cause in any five year period.

5. If a CAFO has two separate discharge events brought about by the same cause, the department may terminate the No-Discharge Permit in which case the CAFO will be required to seek coverage under a NPDES permit.

6. In accordance with 40 CFR 122.24(j), when a discharge occurs at a CAFO the CAFO will not be in violation of the requirement to seek NPDES permit coverage so long as the CAFO has operated and maintained the CAFO in compliance with the permit.

(C) Effluent Limitations applicable to Class II and smaller sized AFOs. When a Class II or smaller sized AFO is designated as a CAFO by the department, the specific effluent limitations will be based upon the department's best professional judgment but shall not be more stringent than those for Class I CAFOs.

[(A) Process wastewater systems shall be designed in accordance with the design standards rule under 10 CSR 20-8; and

(B) Other limitations shall be in accordance with 10 CSR 20-7.015(9)(G). Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7).

(C) The provisions addressing effluent limitations as set forth in 40 CFR Part 412, Subpart A through Subpart D, July 1, 2007, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954 are incorporated by reference, except for 412.46(d). This rule does not incorporate any subsequent amendments or additions. Except as provided otherwise in this rule, the substitution of terms set forth in 10 CSR 20-6.300 shall apply in this rule in addition to any other modifications set forth in this rule.

(D) Open surface liquid impoundments shall have a depth marker that clearly indicates the upper operating level of the impoundment and the lower operating level, if applicable, of the impoundment.

(E) Secondary Containment Structure.

1. All Class 1A concentrated animal feeding operations utilizing flush systems shall have a containment structure(s) or earthen dam(s).

2. The containment structure(s) or earthen dam(s) shall be sized to contain a minimum volume equal to the maximum capacity of flushing in any twenty-four (24)-hour period from all gravity outfall lines, recycle pump stations, and recycle force mains.

3. Construction permit(s) shall be required for the design and construction of the containment structures for all new facilities.

(F) All Class 1A concentrated animal feeding operations utilizing flush systems shall have an electronic or mechanical shut-off in the event of pipe stoppage or backflow. For new facilities, the shut-off shall be included as part of the construction permit application.]

(5) Nutrient Management Plans—**In accordance with section (3)(G)1. of this rule, permits shall require the development and implementation of a nutrient management plan. A portion of a CAFO's nutrient management plan includes the engineering design and construction related documents within a CAFO's construction and operating permit application. The plan also includes annual reports and updates submitted to the department. The plan must comply with the requirements found within the Nutrient Management Technical Standard which will satisfy criteria G, H and I below. The plan must, at a minimum, address the following areas: [Nutrient management plans must, to the extent applicable—]**

(A) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(B) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

(C) Ensure that clean water is diverted, as appropriate, from the production area. **NMPs shall include, as necessary, controls, measures or BMPs to properly manage stormwater runoff at the operation. This would apply only to activities in or around the land application or production area that is under the control of the CAFO owner or operator, whether it is owned, rented, or leased. Examples of such activities could include winter feeding areas, stockpiling of manure and raw materials or any other regulated CAFO activity that will contribute pollutants to waters of the state;**

(D) Prevent direct contact of confined animals with waters of the state;

(E) Ensure that chemicals and other contaminants handled **within animal production facilities [on-site]** are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

(F) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the state;

(G) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

(H) Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(I) Identify specific records that will be maintained to document the implementation and management of the minimum elements described in subsections (A) through (H) of this section.

(6) Closure of Waste Storage Structures.

(A) Facilities that cease operation, or plan to close lagoons and other waste storage structures, shall comply with the requirements in this section—

1. Class I concentrated animal feeding operations which cease operation shall continue to maintain a valid operating permit or until all lagoons and waste storage structures are properly closed according to a closure plan approved by the department; and

2. Other concentrated animal feeding operations that cease operation shall either close the waste storage structures in accordance with the closure requirements in subsection (6)(B) of this rule or shall continue to maintain all storage structures so that there is not a discharge to waters of the state.

(B) Closure Requirements.

1. Lagoons and waste storage structures shall be closed by removal and land application of all wastewater and sludge;
2. The removed wastewater and sludge shall be land applied at agricultural rates for fertilizer not to exceed the maximum nutrient utilization of the land application site and vegetation grown and shall be applied at controlled rates so that there will be no discharge to waters of the state; and
3. After removal and proper land application of wastewater and sludge, the earthen basins may be demolished by removing the berms, grading, and revegetation of the site so as to provide erosion control, or the basin may be left in place for future use as a farm pond or similar uses.

(7) Concentrated Animal Feeding Operation Indemnity Fund.

(A) Class IA concentrated animal feeding operations utilizing flush systems shall pay an annual fee of ten cents (10¢) per animal unit to the department for deposit in the Concentrated Animal Feeding Operations Indemnity Fund.

(B) The annual fee shall be based upon the animal unit permitted capacity of the facility.

(C) The annual fee shall be collected each year for ten (10) years on the anniversary date of the operating permit. For facilities permitted after June 25, 1996, the annual fee shall commence on the first anniversary of the operating permit. The annual fee for facilities permitted prior to June 25, 1996, shall commence on the first full year anniversary of the permit following June 25, 1996.

(D) In the event the department determines that a Class IA facility has been successfully closed by the owner or operator, all monies paid by such operations into the Concentrated Animal Feeding Operation Indemnity Fund shall be returned to the operation. In no event, however, shall this refund exceed the unencumbered balance in the Concentrated Animal Feeding Operation Indemnity Fund.

(E) The fees referenced in section (7) shall be paid by a check or money order and made payable to the State of Missouri, Concentrated Animal Feeding Operation Indemnity Fund. In the event a check used for the payment of operating fees is returned to the department marked insufficient funds, the person forwarding the check shall be given fifteen (15) days to correct the insufficiency.

(F) Fees shall be submitted to Department of Natural Resources, Water Pollution Control Program, Permit Section, PO Box 176, Jefferson City, MO 65102.

(G) Each payment shall identify the following: state operating permit number, payment period, and permittee's name and address. Persons who own or operate more than one (1) operation may submit one (1) check to cover all annual fees, but are responsible for submitting the appropriate information to allow proper credit for each permit file account.

(H) Annual fees are the responsibility of the permittee. Failure to receive a billing notice is not an excuse for failure to remit the fees.

[(8) Letters of Approval.

(A) General Requirements.

1. Animal feeding operations that are not otherwise required to obtain a permit under this rule may apply for a letter of approval on a voluntary basis.

2. As the department does not examine structural features of design or the efficiency of mechanical equipment, the issuance of a letter of approval does not include approval of these features.

(B) Letters of approval shall require the following:

1. The facility shall be constructed and operated so that the wastewater or wastewater treatment residuals will be land applied to provide beneficial use in agriculture or silviculture;

2. Class II facilities, applying for the letter of approval shall be designed, constructed, and operated so as not to discharge through a man-made conveyance; except for those caused by rainfall events exceeding the twenty-five (25)-year, twenty-four (24)-hour rainfall event; and

3. Facilities smaller than Class II applying for the letter of approval shall use best management practices approved by the department.

(C) The letter of approval may be modified or revoked for causes including, but not limited to, the following:

1. Violation of any term or condition of the letter of approval;

2. A misrepresentation or failure to fully disclose all relevant facts in obtaining a letter of approval;

3. A change in the operation, size, or capacity of the approved facility; or

4. A change in the agreement between the operating authority and the landowner(s).

(D) When an operating permit is required under this rule or under 10 CSR 20-6.010 for any activity, no-discharge facilities at the same operating location shall be incorporated into the operating permit and a letter of approval shall not be issued.

(E) Applications for Letters of Approval.

1. An application for, or renewal of, a construction letter of approval or operating letter of approval shall be made on forms provided by the department. The applications may be supplemented with copies of information submitted for other federal or state permits.

2. All applications must be signed as follows:

A. The chief executive officer of a corporation or by an individual having responsibility for the overall operation of the regulated facility or activity, such as the plant manager, or by an individual having overall responsibility for environmental matters at the facility;

B. A general partner or the proprietor, respectively, of a partnership or sole proprietorship; or

C. A principal executive officer of a municipal, state, federal, or other public facility or an individual having overall responsibility for environmental matters at the facility.

3. Incomplete applications.

A. When an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and given a requested response time to complete the application. Processing of the incomplete application will be discontinued until the applicant has corrected all deficiencies.

B. In the event the department does not receive a response within sixty (60) days after the applicant has been notified of an incomplete application, the application will be closed and returned to the applicant. The applicant shall submit a complete new application in order to receive further consideration of the proposal.

4. The department will act by either issuing or denying the construction or operating letter of approval application within ninety (90) days of receipt of a complete application. Reasons for a denial shall be given to the applicant in writing.

5. In the event the department fails to act within ninety (90) days of receipt of a complete application by either issuing or denying a letter of approval, the applicant may proceed with construction. However, changes may be necessary by the department to the design and proposed operation of the facility prior to issuing an operating letter of approval.

6. Continuing authorities for letters of approval.

A. All applicants for construction or operating letters of approval shall show as part of their application that a permanent entity exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. Construction and operating letters of approval shall not be issued unless the applicant provides the proof to the department and the continuing authority has submitted a statement indicating acceptance of the facility.

B. Continuing authorities which can be issued letters of approval to collect and/or treat or dispose of process wastes under this regulation are listed under 10 CSR 20-6.010.

(F) Construction Letters of Approval.

1. Applications for construction letters of approval shall be made on a form provided by the department at least ninety (90) days before the planned start of construction.

2. A separate application shall be submitted for each facility intended for treatment or disposal of process wastes. However, one (1) application may cover all facilities where there are multiple facilities at a single operating location.

3. An application shall consist of the following items:

A. An application form;

B. An engineering report along with plans and specifications shall be submitted governing the design of the waste handling system. All shall be affixed with a professional engineer's seal;

C. An operation and maintenance plan for collection, storage and land application of process wastes; and

D. Other information necessary to determine compliance with the Missouri Clean Water Law and these regulations as required by the department.

4. Expiration of construction letters of approval.

A. Construction letters of approval shall expire one (1) year from the date of issuance unless the owner or authorized representative applies for an extension. An applicant for the extension shall show that there have been no substantial changes in the original project and file for extension thirty (30) days prior to expiration of the approval. Only one (1) extension will be given.

B. When a construction approval is issued for a project for which the construction period is known in advance to require longer than one (1) year from the date of issuance, the department may issue an approval allowing a period of time greater than one (1) year upon a showing by the applicant that the period of time is necessary and that no substantial changes in the project will be made without notifying the department. If there are substantial changes, the department may require the applicant to apply for a new construction letter of approval.

C. Construction letters of approval may be issued for a period of less than one (1) year when appropriate.

(G) Operating Letters of Approval.

1. One (1) operating application shall be submitted to cover all nondischarging facilities at a single operating location.

2. Applications for an operating letter of approval shall be made on a form provided by the department and should be filed immediately after the project has been completed. The department shall require that a professional engineer affix his/her seal and certify in writing that the project has been completed in accordance with its approved plans and specifications or submit engineering certification of as-built plans and specifications and other supporting documents listed in subsection (8)(F).

3. Obtaining a letter of approval from the department shall not relieve the operator of any requirement to comply with any local or federal laws or regulations.

4. The operating letter of approval will normally be issued to the owner for the life of the facility or until ownership changes. The approval may be issued for a shorter period when appropriate.

5. The owner shall advise the department when ownership changes, when the facility is closed or when other significant changes are made to the facility that would require updating of the approval.

(H) Transfer of Letters of Approval.

1. Unless a permit is required under section (2), an operating letter of approval may be transferred upon submission to the department of an application to transfer signed by a new owner or other continuing authority or responsible party.

2. The letter of approval shall automatically terminate if a transfer application is not submitted within ninety (90) days after the ownership change.

3. Within sixty (60) days of receipt of a transfer application, the department shall notify the new applicant that the letter of approval is transferred or revoked. If the department fails to notify within this time frame, the new applicant will be considered the new owner or responsible party.

4. Construction letters of approval are not transferable. If ownership of a facility under construction changes, the new owner shall apply for a new construction letter of approval following the procedures in subsection (8)(F).

(I) Terms and Condition of Letters of Approval.

1. All waste, wastewater, sludge, residuals, and by-products shall be handled and disposed so that there is no discharge to waters of the state except for surface discharges from nonpoint sources which use approved best management practices. There shall be no discharges to subsurface waters.

2. An animal feeding operation for which an operating letter of approval has been issued shall not discharge to waters of the state except for a discharge caused by rainfall events exceeding the twenty-five (25)-year, twenty-four (24)-hour rainfall event. If an unauthorized discharge occurs, the letter of approval is void. The owner must immediately eliminate any discharge to waters of the state and any substantial threat of future discharges or shall apply for an operating permit.

3. The operating letter of approval shall automatically become invalid upon the issuance of an operating permit.

4. The letter of approval may be modified, reissued, or terminated upon notification from the department as necessary to protect waters of the state or to assure compliance with the Missouri Clean Water Law.

5. The letter of approval shall require that the facility be designed and operated to provide a beneficial use in accordance with subsection (8)(B).

6. The letter of approval pertains only to the Missouri Clean Water Law and regulations. It does not apply to other laws and regulations.

7. For the purpose of inspecting, monitoring, or sampling the treatment or disposal facility for compliance with the Clean Water Law and these regulations, the owner or operator of the letter of approval facility shall allow authorized representatives of the department, upon presentation of credentials and at reasonable times to—

A. Enter upon the premises in which a treatment or disposal facility is located or in which any records are required to be kept under terms and conditions of the letter of approval;

B. Have access to or copy any records required to be kept under terms and conditions of the letter of approval;

C. Inspect any monitoring equipment or monitoring method required in the letter of approval;

D. Inspect any collection, treatment, or land application facility covered under the letter of approval; and

E. Sample any waste, wastewater, sludge, residuals, or by-products at any point in the collection system or treatment process.

8. Facility expansions, production increases, or process modifications which will result in new or different process waste characteristics must be reported sixty (60) days before the facility or process modification begins. Notification may be accomplished by application for a new letter of approval, or if the change will not significantly alter disposal limitations specified in the letter of approval, by submission of notice of the change to the department.

9. Solid wastes or hazardous waste shall not be introduced into the facility or otherwise land applied or disposed except in accordance with the Missouri Solid Waste Management Law and regulations under 10 CSR 80 and the Missouri Hazardous Waste Management Law and regulations under 10 CSR 25.

10. All reports required by the department shall be signed by a person designated in this rule or a duly authorized representative as follows:

A. The signature authorization may be delegated if the representative so authorized is responsible for the overall operation of the facility and the authorization is made in writing by a person designated in subsection (8)(E) of this rule and is submitted to the department; and

B. Any changes in the written authorization which occur after the issuance of a letter of approval shall be reported to the department by submitting a new written authorization which meets the requirements of paragraph (8)(I)12.

11. New confinement operations shall comply with the design standards in subsections (4)(A)–(B) of this rule; and

12. Other terms and conditions may be incorporated into letters of approval if the department determines they are necessary to assure compliance with the Clean Water Law and regulations.]

AUTHORITY: sections 640.710 and 644.026, RSMo 2000.* Original rule filed June 1, 1995, effective Jan. 30, 1996. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed July 9, 1998, effective March 30, 1999. Amended: Filed May 12, 2008, effective Feb. 28, 2009.

*Original authority: 640.710, RSMo 1996 and 644.026, RSMo 1972, amended 1973, 1987, 1993, 1995, 2000.

Public Cost: This proposed amendment will cost the Missouri Department of Natural Resources \$60,023 in the aggregate.

Private Cost: The proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Darrick Steen, P.O. Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through e-mail to darrick.steen@dnr.mo.gov. Public comments must be received by September 14, 2011. The Missouri Clean Water Commission will hold a public hearing at 9 A.M., September 7, 2011 at the Lewis and Clark State Office Building, Nightingale Creek Conference Room, 1 East, 1101 Riverside Drive, Jefferson City, Missouri 65102.

**FISCAL NOTE
PUBLIC COST**

**I. Department Title: Missouri Department of Natural Resources
Division Title: Division of Environmental Quality
Chapter Title: Permits**

Rule Number and Name:	<i>10 CSR 20-6.300, Concentrated Animal Feeding Operation</i>
Type of Rulemaking:	<i>Proposed Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Natural Resources	<i>The cost to comply is \$60,023</i>

III. WORKSHEET

See next page

New NPDES CAFO General Permits Expected
Additional Time Required to Review

EE II - .0010 FTE for engineering review	2	0.0010	48	\$ 55,548	\$855	\$2,564	\$2,720	\$2,801
EE III - .0010 FTE for program review	1	0.0005	48	\$ 62,952	\$484	\$1,453	\$1,541	\$1,587
ES III - .0212 FTE for plan review	26	0.0125	48	\$ 46,248	\$9,250	\$27,749	\$29,439	\$30,322
SOSA - .0019 FTE for Admin. Support	3	0.0014	48	\$ 27,564	\$636	\$1,908	\$2,024	\$2,085
FTE PS TOTAL	32	0.0154			\$11,225	\$33,674	\$35,724	\$36,796
FRINGE - 53.09%					\$5,959	\$17,877	\$18,966	\$19,535
EE					\$99	\$106	\$111	\$115
Personal Service Cost + Fringe + EE TOTAL					\$17,283	\$51,057	\$54,802	\$56,446
Indirect - 30.85%					\$5,332	\$15,936	\$16,906	\$17,413
Indirect with TOTAL					\$22,614	\$67,593	\$71,708	\$73,859

Notes: Personal Service annual rates are based on the Market Level Pay Rates for each classification
 *20% of 240 apps = 48 new NPDES apps per year. 48 applications will require 0.739 additional FTE to review applications, issue application and RO compliance assistance.
 FTE Calculation = EE II for Review and Issuance = 2 hours Per Application = 2 / 2,080 hours = .0010 FTE
 Annual FTE Calculation = EE II for Review and Issuance = 2 hours per applications = 2 / 2080 hours = .0010 annual hours X 48 = 0.048 Annual FTE
 FTE Calculation = EE III for Program Review = 1 hour Per Application = 1 / 2,080 hours = .0005 FTE
 Annual FTE Calculation = EE III for Review and Issuance = 1 hour per application = 1 / 2080 hours = .0005 annual hours X 48 = 0.024 Annual FTE
 FTE Calculation = ES III for Program Review = 26 hours Per Application = 26 / 2,080 hours = .0125 FTE
 Annual FTE Calculation = ES III for Permit review and site Inspections = 26 hours per application = 26 / 2,080 hours = 0.0125 X 48 = 0.60 Annual FTE
 FTE Calculation = SOSA for Admin Support = 3 hours Per Application = 3 / 2,080 hours = .0014 FTE
 Annual FTE Calculation = SOSA for Admin Support = 3 hours per application = 3 / 2,080 hours = 0.0014 X 48 = 0.0672 Annual FTE

NET DIFFERENCE IN INCREASE AND DECREASE OF TIME REQUIRED TO RENEW PERMITS:

INCREASE:	32	\$22,614	\$67,593	\$69,619	\$71,708	\$73,859
DECREASE:	20	\$4,351	\$12,663	\$13,042	\$13,433	\$13,836
NET DIFFERENCE:	12	\$18,263	\$54,930	\$56,578	\$58,275	\$60,023

NOTE: Different portions of the rulemaking will both increase and decrease department costs. This fiscal note attempts to capture both. The net difference is shown in the table above, resulting in an overall increase in cost.

**Fewer State-No Discharge Permits Expected Due to Animal Unit Threshold Change
Less Time Required To Review**

Hourly Classification	Permit Type	Permit Fee	Number of Permits	Annual Salary	ES III - 2017 (45 months)	ES III - 2018	ES III - 2019	ES III - 2016
EE III - .0010 FTE for engineering review	1	0.0005	14	\$ 62,952	\$141	\$424	\$436	\$450
ES III - .0010 FTE for program review	18	0.0087	14	\$ 46,248	\$1,868	\$5,603	\$5,771	\$5,944
SOSA - .0019 FTE for Admin. Support	1	0.0005	14	\$ 27,564	\$62	\$186	\$191	\$197
PS TOTAL	20	0.0096			\$2,071	\$6,212	\$6,399	\$6,591
FRINGE - 53.09%					\$1,099	\$3,298	\$3,397	\$3,499
EE					\$155	\$167	\$171	\$176
PS + Fringe + EE TOTAL					\$3,325	\$9,678	\$9,967	\$10,266
Indirect - 30.85%					\$1,026	\$2,986	\$3,075	\$3,167
TOTAL					\$4,351	\$12,663	\$13,042	\$13,433

Notes: Personal Services annual rates are based on the Market Level Pay Rates for each classification
20% of 70 fewer permit applicants = 14 fewer applications per year. The 14 fewer permits will require 0.134 fewer FTE.
 FTE Calculation = **EE III** for 1 hours Per Application = 1 / 2,080 hours = .0005 FTE Per Application
 Annual FTE Calculation for permit issuance = 48 applications X 1 hours = 1 hours / 2,080 annual hours = **0.0005 Annual FTE**
 FTE Calculation = **ES III** for Compliance Assistance = 18 hours Per Application = 18 / 2,080 hours = .0087 FTE
 Annual FTE Calculation = **ES III** for Site Inspections = 240 applications X 44 hours = 44 / 2,080 annual hours = **0.0087 Annual FTE**
 FTE Calculation **SOSA** for Admin Support = 1 hours Per Application = 1 / 2,080 hours = .0005 FTE Per Application
 Annual FTE Calculation = 48 applications X 1 hours = 1 / 2,080 annual hours = **0.0005 Annual FTE**

IV. ASSUMPTIONS

The duration of the proposed rule is indefinite. There is no sun-set clause. Costs imposed by the proposed rule are shown on an annual basis. It is assumed that additional years will be consistent with the assumptions used to calculate the annual costs identified in this fiscal note. The above estimates are based on current dollar values, except that a 3% inflation rate was applied. The fringe benefit rate, expense and equipment costs and indirect rate for personal service costs are based on personal service costs for 2011, including the market rate for the various classifications. The rule is assumed to be effective February 29, 2012.

This proposed amendment will cost the Department, overall, up to \$60,023 in the aggregate to comply with this rulemaking. Costs for additional staff hours to review and issue new NPDES permits are offset by the reduction in costs based on fewer staff hours needed to review and issue the CAFO permits.

A public fiscal impact is expected to result from the following two changes within this rulemaking:

- 1) Change to animal unit thresholds for chicken and egg laying operations.
- 2) Changes to the NPDES operating permit issuance process.

1) Animal unit thresholds

The rulemaking proposes to re-align state regulatory animal thresholds with current EPA thresholds. Animal unit thresholds are used by EPA and the department to determine which confinement operations are defined as a CAFO and consequently are required to obtain a permit from DNR. In order to re-align state thresholds with EPA thresholds, the proposed rule will change the thresholds for broiler, pullet and egg laying operations. The change in thresholds will result in fewer chicken operations being defined as a CAFO in Missouri. With fewer permitted operations there will be fewer permits for the department to administer and therefore this change will reduce the fiscal impact on the department. We estimate that as many as seventy (70) operations may be impacted by the threshold change; these would no longer be required to have a CAFO permit. The departmental impact of this change is that up to seventy fewer permit renewal applications will be reviewed and processed by the department. In addition, this change will also reduce our permit compliance inspection workload. The department estimates that the reduction of 70 fewer permits to administer will reduce staff time to review permits by 280 hours (0.134 FTE) per year.

2) NPDES Permit Process

The proposed rule aligns the Missouri CAFO general permit process so that it will comply with the new EPA NPDES CAFO permit process. This change will only effect operations seeking coverage under (and making major modifications to) a NPDES permit. It will have no impact on the state no-discharge permit. The new process will require the department to conduct a detailed review, comment on a CAFO's Nutrient Management Plans (NMP) and, identify the appropriate permit terms within each NMP for each operation. The department will take the site specific permit terms and incorporate them into a draft general permit. The department must provide an

opportunity for public comment based on a public notice of each individual draft general permit before being issued. This public participation process is conducted prior to permit issuance. The department estimates that up to 240 operations may seek coverage under the NPDES permit, instead of the state no-discharge permit. The department estimates that the new permit issuance process for NPDES permits will add an additional one thousand, five hundred thirty six (1,536) staff hours (0.739 FTE) to review permits per year.

Assumptions and Notes:

- The department estimates that 70 confinement operations will be impacted by the animal threshold change. 70 operations represents broiler, pullet and egg laying operations that were previously Class IC size and do not have a wet handling system. The threshold change will lower these 70 operations to a Class II size operation.
- The department estimates that it requires 20 staff hours over the life of the 5 year permit cycle to issue and administer a state no discharge operating permit. The total hours include four (4) hours of permit writing staff time, six (6) hours of central office compliance time and ten (10) hours for a regional office inspection.
- The estimated 240 operations that will obtain a NPDES permit represents all of Missouri's Class I size beef, dairy, swine and egg laying operations that have liquid manure systems.
- The department estimates that thirty-two (32) additional staff hours will be necessary to issue and administer the new CAFO NPDES permit over the life of the 5 year permit cycle. The additional hours include 18 hours of central office permit writing staff time, 12 hours for central office staff time on one permit modification, and 2 hours of central office compliance time.
- The proposed rule also includes provisions for a State No-Discharge permit. CAFOs that do not obtain coverage under the NPDES permit must obtain coverage under this permit. The permit issuance process for the state no discharge permit will be very similar to the current process and is not expected to either increase or decrease the amount of staff time needed to issue this permit. This permit process essentially represents the way we issue permits now.
- The department must inspect permitted CAFOs once each permit cycle (one every five years). The department will also conduct an unknown number of complaint investigations; however because this is an unknown, this was not accounted for within the cost.
- Permit fee income was not evaluated or factored into the calculations.