

Rulemaking Report

Updated: January 11, 2016

Affected Rule: 10 CSR 20-8.300, Manure Storage Design Regulations

1. What is the purpose of this rulemaking?

The purpose of this rule is to accommodate the statute change in 644.051, RSMo that eliminated construction permitting for Confined Animal Feeding Operations (CAFOs) for projects that do not involve the construction of earthen basins. Most of the existing specific design criteria for the construction of manure management systems will not change.

In addition, the rule will be updated and clarified. Individual clarifications include 1) the improvement and addition of several definitions, 2) clarifying the items needed in an application for engineering review, 3) the removal of nutrient management plan requirements that are redundant with the requirements of 10 CSR 20-6.300 Confined Animal Feeding Operations, 4) changes to design requirements for earthen basins, and 5) editing rule language to reflect the recent change to the name of the Division of Geology and Land Survey to Missouri Geological Survey.

Finally, the proposed amendment will add specific requirements related to lagoon design. These requirements include changes to the top widths required for various fill heights, excluding stormwater runoff when possible, specifying that berm fill around pipes be compacted to prevent seepage, requiring valves on all pipes going through berms, locating pipes at a point of minimum lagoon fill, establishing a minimum lagoon drawdown depth of two feet to protect the lagoon line, requiring an operations and maintenance plan for all major components, and requiring that safety aspects be considered in design.

2. Why is the rulemaking being proposed now?

This rulemaking amendment is being undertaken at this time to address the changes to the Clean Water Law. This legislation eliminated the need for new or expanding CAFOs that will not have an earthen basin to obtain permits for the construction of components that store wastewater. This revision also provides an opportunity to improve rule language by clarifying definitions, specifying application requirements, removing redundant requirements, and inserting additional lagoon design considerations.

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

40 CFR 412.46(a)(1), November 20, 2008 is currently incorporated by reference. This federal regulation is the new source performance standard for CAFO production areas and it establishes the technical evaluation requirements to ensure that manure storage structures do not discharge manure, litter, or process wastewater.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

Yes. Pursuant to Section 640.015 RSMo, “all rulemakings that prescribe environmental conditions or standards promulgated by the Department of Natural Resources...shall... be based on the Regulatory Impact Report. While the primary purpose of the rule is to clarify language and to remove the requirement for new facilities to obtain a construction permit (unless they are constructing earthen basins) as explained above, the rulemaking will prescribe environmental conditions or standards related to some aspects of lagoon design. For this reason, a Regulatory Impact Report was prepared as part of this rulemaking effort.

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

Authority is 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.” Authority for rulemaking is found in Section 644.026 RSMo - Powers and duties of commission—rules, procedure. This section authorizes the clean water commission to “Adopt, amend, promulgate, or repeal after due notice and hearing rules and regulations to enforce, implement, and effectuate the powers and duties of sections 644.006 to 644.141 and any required of this state by any federal water pollution control act, and as the commission may deem necessary to prevent control and abate existing or potential pollution.”

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

This rulemaking will reflect the statute change in 644.051, RSMo, which relieves CAFO owners who construct manure storage systems or wastewater treatment facilities without earthen basins from needing to obtain a construction permit prior to construction. The rulemaking will not relieve CAFOs owners from having to meet current design and operational requirements. The amendment will also help to clarify certain requirements by adding definitions and removing redundant requirements.

Regarding lagoon design considerations, the proposed language will require animal waste lagoons to be designed to exclude stormwater runoff when possible. The rule will specify top widths for various fill heights. The rule will specify that berm fill around pipes shall be compacted to prevent seepage and that pipes must be valved and located at a point of minimum fill. A provision will be added to establish a minimum lagoon depth of two feet to protect the lagoon liner. The rule will also require an operations and maintenance plan for major lagoon components and state that safety must be considered as part of lagoon design. All of these lagoon requirements will serve to assure that these facilities are designed to minimize the risk of an environmental impact. Animal wastes are high in nutrients and proper design of these facilities is aimed at preventing these wastes from entering the environment where there is a potential for environmental impacts.

7. Who is most likely affected by the rulemaking?

The rule applies to all CAFOs that construct manure storage and wastewater treatment systems. The rule will exempt some of these facilities from needing to obtain a construction permit from the Department prior to constructing.

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 vast majority of newly built CAFOs are owned by small businesses. Many aspects of this rulemaking are not expected to impact small businesses since the amendment will reflect the statutory change in 644.051, RSMo which removes the regulatory requirement to obtain a construction permit and to clarify existing requirements. Regarding the addition of specific requirements related to lagoon design, the requirements in this rule are focused on appropriate design so that these wastes are properly handled. The proposed new requirements involve good construction and design practices that responsible owners typically employ.

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

There should be no additional costs to the agency for implementation over and above the current costs of CAFO inspections. There are no other costs anticipated from other agencies. The United States Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) provides both technical design services and cost share on the installations of manure management systems, but these activities are not expected to be impacted.

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

The amendment is not expected to affect state revenue.

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

Department staff will work closely with representatives from the USDA-NRCS and the University of Missouri's Commercial Agriculture Program. In addition, staff will include small business representatives by soliciting comments on a draft rule from the Missouri Department of Agriculture's Missouri Small Business Authority and the USDA's Financial Service Agency.

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

The Department held a stakeholder meeting on April 15, 2014 and will also place the rule on public notice and hold a public hearing as part of the formal rulemaking process. These activities will meet the requirements of public participation.

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?
15. What is the expected calendar for this rulemaking, particularly the dates for the comment period and public hearing?

The Department expects to hold a public hearing regarding this rule on April 2016.

Publication in the <i>Missouri Register</i>	March 1, 2016
<i>Public Hearing</i>	April 6, 2016
Public Comment Period	March 1, 2016 thru
End of Public Comment	May 18, 2016
<i>CWC Order of Rulemaking Adoption</i>	July 13, 2016
Publication of Order in <i>Missouri Register</i>	September 15, 2016
Rule Published in <i>Code of State Regulations</i>	September 30, 2016
Rule Effective Date	October 30, 2016