



Missouri Department of dnr.mo.gov

**NATURAL RESOURCES**

Eric R. Greitens, Governor

Carol S. Comer, Director

May 16, 2017

<<Addressee>>

Address

City State Zip

RE: Comments on Expedition Acres, LLC Operating Permit Application

Dear <<>>,

Thank you for your comments concerning the application of Expedition Acres, LLC for a Concentrated Animal Feeding Operation (CAFO). The application is for an operating permit for the operation of a new Class IB swine CAFO. This letter contains the comments or a summary of comments received during the thirty-day neighbor comment period and the Missouri Department of Natural Resources' response to comments received. This letter also addresses the concerns identified in a petition that was submitted to the department as well a public hearing held on April 18, 2017. Please note that the department does not have jurisdiction to address comments regarding "non-water quality related items" [10 CSR 20-6.020(1)(H)].

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

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



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Comments were received about the CAFO's water source and the effects the proposed CAFO may have on groundwater levels.

Response: The CAFO's water source is at the discretion of the CAFO owner. If an existing well is to be used or a new well is constructed it must meet construction requirements and setback distances in 10 CSR 23-3. In Missouri, there are no statutes or regulations that specify how much water may be used. Missouri is a riparian water rights state which means all landowners generally have a right to a reasonable use of their water resources.

Comments were received that not all of the nutrients will be utilized by the crops.

Response: Application rates for nutrients are calculated based on their availability in the soil, based on soil testing. In addition, these calculations account for nutrient uptake from the soil through cropping. These calculations are designed to reduce over application of nutrients. The results of these calculations are maintained in the Nutrient Management Plan and to be followed by the facility. With that being said, when application rates are based on nitrogen availability, there is a potential for more phosphorus to be applied than will be utilized by plants or crops. This is because the calculation only considers the limiting nutrient and not both. Alternatively, if soil tests indicate the soils has reached a high phosphorous index rating due to elevated levels of phosphorus in the soil, application rates must then be calculated based on phosphorous availability.

Comments were received relating to the manure being land applied containing antibiotics and pathogens.

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

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

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Comments were received regarding the method, timing, and setbacks for land application as well as regulatory requirements for land application or injection and export of manure.

Response: Land application is widely used and is the preferred method of disposing of animal manure. Domestic and industrial wastewater and sludge are also commonly land applied. Land application of manure to fields under the operational control of the CAFO owner or operator must be done according to their NMP and in compliance with the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS). The NMTS is incorporated into state regulations and contains best management practices for land application of manure including setback distances from sensitive features, prohibits manure from being surface applied during frozen, saturated or snow covered soil conditions, or within 24 hours of a precipitation event that is likely to produce runoff.

Manure that is land applied to fields not under the operational control of the CAFO owner or operator is considered a manure transfer. When all manure produced at an operation is transferred to other parties it is called an “export only” operation, which is one method of manure management that meets regulatory requirements. Expedition Acres, LLC is required to provide all recipients of manure a copy of the most recent manure analysis, the NMTS, and to keep records of all manure transfers. Environmental impacts and any compliance or enforcement actions, including clean up resulting from the discharge of manure is the responsibility of the person conducting the application and/or the landowner receiving the application, pursuant to Missouri Clean Water Law. Any agreement between the CAFO, applicator, or landowner as to who is the responsible property would be a civil agreement between those parties.

Comments were received regarding Expedition Acres, LLC’s development/compliance with their Nutrient Management Plan (NMP).

Response: State and federal regulations require all permitted CAFOs to develop and implement a NMP that addresses nine required elements. Fields that are not under operational control of the CAFO owner are not required to be included in the CAFO’s NMP. The department has reviewed the required elements of the Expedition Acres, LLC NMP and the plan meets regulatory requirements. Compliance with the NMP is reviewed during inspections.

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

Response: Discharges of manure to waters of the state resulting from land application of manure are not allowed; the department does not refute there may be contaminants present in agricultural stormwater discharges. Any discharge of manure is subject to compliance and enforcement actions. When manure has been land applied in accordance with the operations nutrient management plan and the Nutrient Management Technical Standard, a precipitation related discharge is considered to be an agricultural stormwater discharge. See comment above in

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regards to environmental impacts as a result of land application on fields not under the operational control of the CAFO.

Comments were received regarding the legality/requirements for manure/spreading agreements submitted by Expedition Acres, LLC.

Response: Because this is a civil agreement it does not fall within the scope of this permit action and is outside the jurisdiction of the Missouri Clean Water Law. Manure easements are not required to be submitted with an operating permit application. There are no state regulations requiring CAFOs that transfer manure to obtain spreading agreements. Spreading agreements are arrangements between landowners and Expedition Acres, LLC. The development and maintenance of these agreements are the responsibility to the involved parties.

Comments were received about the potential for odor and air quality/pollution from the proposed CAFO.

Response: Class I CAFOs must meet the appropriate buffer distance required in CAFO statutes, as established by the Missouri General Assembly in Section 640.710 RSMo.2 (1) which states “For concentrated animal feeding operations with at least one thousand animal units, one thousand feet.” between the nearest confinement building or wastewater storage structure, and existing public building or occupied residence. Expedition Acres, LLC has complied with the minimum 2000 foot buffer distance for a Class IB CAFO. This is the only state law or regulation regarding odor or air pollution for Class IB CAFOs. The department’s Air Pollution Control Program regulates odor. However, with respect to CAFOs, odor regulations apply only to Class IA facilities.

Comments were received about the location of the proposed CAFO in relation to houses, streams, and lakes in the area.

Response: The proposed CAFO has complied with the minimum 2000 foot buffer distance between the nearest confinement building or wastewater storage structure and existing public building or occupied residence as required under Section 640.710 RSMo. The department also reviews the confinement building location for the regulatory requirements of setback distances, geohydrological evaluation if required, and protection from a one hundred year flood event. Expedition Acres, LLC meets the regulatory setback distances and locational restrictions. These are the only regulations regarding location that fall within the scope of this permit action and the jurisdiction of the Missouri Clean Water Law. There are also no regulations regarding the separation distance between CAFOs.

Comments were received relating to health issues.

Response: The Clean Water Commission has developed Water Quality Standards in 10 CSR 20-7.031. This regulation establishes ambient Water Quality Standards for those water contaminants

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for the protection of groundwater and surface water for the purposes of aquatic life protection, human health protection-fish consumption, drinking water supply, irrigation, livestock and wildlife watering, groundwater, and whole body and secondary contact recreation. The Clean Water Commission has also developed regulations regarding the design of manure storage structures and permit requirements for the operation of CAFOs that established a no-discharge effluent limitation. These are the only state laws or regulations regarding health issues that fall within the scope of this permit action and the jurisdiction of the Missouri Clean Water Law.

Comments were received relating the use of antibiotics and the prevention and spreading of diseases.

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

Comments were made relating to health/welfare of wildlife.

Response: The no discharge requirement for CAFOs is protective of Water Quality Standards for the purpose of aquatic life protection, human health protection, and livestock and wildlife protection. The department acknowledges the community's concern and believes a no discharge limitation is the most protective requirement that is possible within the jurisdiction of the Missouri Clean Water Law. There may be issues that fall within the jurisdiction of other agencies within state or federal government.

Comments were received regarding the number of animals in confinement reported at the proposed CAFO and future expansion.

Response: CAFO's are required to list the design capacity of the operation. This is the number of animals in confinement the operation is designed to hold at any given time. Design capacity is used to determine the classification size of the operation and to calculate annual manure production based upon 365 day occupancy. CAFOs are allowed to operate at animal numbers that do not exceed their permitted class size (i.e. Class IC or IB). CAFOs that add confinement buildings or areas, or expand to a larger class size must do so according to state regulations regarding buffer distance, setback distances, and neighbor notice requirements.

Comments were received that requested the department to take into account the public opposition, deny the application and not issue a permit to Expedition Acres, LLC.

Response: The department's responsibility is to protect water quality through the administration of state and federal environmental laws and regulations. In addition, the department reviews and considers the content of all comments. While the department received a number of comments opposed to issuing the permit, Section 644.051, RSMo states "The director shall grant or deny the permit within sixty days after all requirements of the Federal Water Pollution Control Act concerning issuance of permits have been satisfied".

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Comments were received regarding the neighbor notice/comment period and community involvement.

Response: All Class I CAFOs are required to meet neighbor notice requirements in Section 640.710 RSMo. Expedition Acres, LLC sent notifications that met the statutory requirements on February 21, 2016 initiating the neighbor notice process. Section 640.710 RSMo. also requires the department to accept written comments for thirty days after the receipt of an application for an operating permit. The department received the permit application on February 16, 2017, and the comment period ended on March 19, 2017. While those individual that are required to receive the notification may not know if an application has been submitted, they will have a minimum of 30 days to submit written comments.

Comments were received that Missouri CAFO regulations are inadequate.

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

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

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

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

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

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

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the department's Northeast Regional Office to report an environmental concern. Reported discharges and environmental concerns are promptly investigated by the department.

Comments were received regarding the compliance history of Professional Swine Management.

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

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

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

Comments were received regarding mortality management at Expedition Acres, LLC.

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

Comments were received regarding the sampling requirements.

Response: Because CAFOs in Missouri are required to be no discharge facilities, any unauthorized discharge is a permit violation. Thus sampling of discharges is not required. State regulations require the sampling of each unique source of manure annually for nutrient content and soil samples to be taken every five years for fields that are required to be included in the NMP. The results of manure and soil samples are to be used to calculate annual manure application rates.

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

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

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permanent organization [or individual] for the operation, maintenance and modernization of the facility.

Comments were received regarding corporate/out of state ownership of Expedition Acres, LLC.

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

Comments were received that Expedition Acres, LLC has removed trees and brush to build a water structure.

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

Comments were received that the proposed building site for the operation is not suitable for development.

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

Comments were received about noise, local traffic conditions, and maintenance of the roads due to the traffic from Expedition Acres, LLC.

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

Comments were received that Expedition Acres, LLC may have impacts on residential property values.

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

Comments were received regarding the quality of life.

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

The department has carefully reviewed the permit application for Expedition Acres, LLC as well as the public's comments and concerns. The department is obligated to review each application equally in respect to compliance with regulations set forth by the Clean Water Commission. Based upon this review we have determined that the operating permit application is complete and that the operation meets the requirements as outlined in the Missouri Clean Water Law.

In accordance with Missouri's regulations found in 10 CSR 20-6.300 and 10 CSR 20.8.300, an operating permit will be issued to Expedition Acres, LLC.

Thank you for taking the time to become involved in our efforts to protect our environment and preserve our water resources. Your comments were fully considered as this matter was reviewed. We hope that this letter was valuable in providing answers to your questions, and if you have further questions, please contact Mr. Gordon Wray at 573-751-1398 or by mail at P.O. Box 176, Jefferson City MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM

A handwritten signature in black ink that reads "Chris Wieberg". The signature is written in a cursive, flowing style.

Chris Wieberg, Chief  
Operating Permits Section

CW:gws

c: Expedition Acres, LLC