

Name
Address
City State Zip

RE: Comments on Tompkins Family Farms LLC Operating Permit Application

Dear Mr./Mrs Name:

Thank you for your comments concerning the application of Tompkins Family Farms 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' (Department) response to comments received. Please note that the Department does not have jurisdiction to address comments regarding "nonwater quality related items" [10 CSR 20-6.020(1)(H)].

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

Response: In Missouri, there are no statutes or regulations that specify how much 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 asking if there are any requirement for the monitoring of water quality.

Response: The Department's Water Protection Program periodically tests, assesses, and classifies streams within Missouri. If Water Quality Standards in a stream are being exceeded, it can be placed on the impaired waters 303(d) list. This will identify the section of the stream that is impaired and the contributing pollutant(s) to help state and federal agencies to address the water quality issues of that stream. This list can be accessed online at <http://dnr.mo.gov/env/wpp/waterquality/303d.htm>.

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., requires CAFOs to be designed by a Professional Engineer registered in Missouri in accordance with the Clean Water Commission's CAFO design regulations and constructed according to those design plans. The permit Tompkins Family Farms LLC applied for does not allow discharges to waters of the state for any reason. The animals must not have contact with waters of the state and the manure cannot be exposed to precipitation or stormwater without runoff containment. The proposed facility meets the regulatory setback distances to features such as streams, ponds, wetlands, and wells. The no discharge requirement is the most restrictive effluent limitation that can be required of a permitted facility and is protective of Water Quality Standards.

Comments were received 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 Section 640.710 RSMo., between the nearest confinement building or wastewater storage structure, and existing public building or occupied residence. Tompkins 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 that falls within the scope of this permit action and the jurisdiction of the Missouri Clean Water Law. The Department's Air Pollution Control Program regulates odor. However, with respect to CAFOs, odor regulations apply only to Class IA facilities.

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

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. The design capacity is also used to calculate annual manure production based upon 365 day occupancy. The application submitted meets the requirements for a Class IB CAFO facility.

Comments were received regarding the size classification of AFOs.

Response: Regulations in 10 CSR 20-6.300 establish class size categories for AFOs based on the number of animal units in confinement. The number of animals to make one animal unit varies upon the type of animal, size of the animal, and the type of waste management system. The class size category is used to determine the regulatory and permitting requirements an operation must follow. The Tompkins Family Farms LLC operation is proposed as a Class IB CAFO.

Comments were received that requested the Department deny/delay the application and not issue a permit to Tompkins Family farms LLC.

Response: The Department's responsibility is to protect water quality through the administration of state and federal environmental laws and regulations. As required by state law, the Department must promptly review CAFO general operating permit applications for compliance with laws and regulations and if met, issue the permit within sixty days of receiving a complete application.

Comments were received wondering if the engineering plans for the structures would be reviewed. Comments were also received about the cracks in the concrete.

Response: Engineering plans are not required to be submitted with an operating permit application. In accordance with Chapter 644.051 RSMo. any point source designed to hold, convey, store or treat domestic, agricultural, or industrial process wastewater must be designed by a professional engineer registered in Missouri in accordance with design rules in 10 CSR 20-8.300. A document was submitted with P.E. seal, certifying that the project was designed in accordance with the regulation. These regulations require that the tanks and pits be designed and constructed to be water-tight. The entire system must be designed and constructed to be no-discharge. In accordance with 10 CSR 20-6.300(2)(F)4, the Department does not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the manure system only adherence to the regulation, and issuance of a permit does not include approval of such features.

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

Response: Manure contains inorganic and organic forms of nitrogen. All of the inorganic nitrogen is immediately available to the plants, but some can be lost by volatilization. Incorporating or injecting the manure reduces the amount that is lost. Organic nitrogen must go through a mineralization process before it is available to the plants. A portion is available during the first year, some during the second year, and some never becomes available. Application rates must be calculated every year and take into account the nitrogen that is available from the previous year's application.

With nitrogen based manure applications, there is usually an over application of phosphorous. When soil test phosphorous levels are high and phosphorous (P) – index rating is high, manure applications must be phosphorous based.

Comments were received regarding the method (e.g. injection or surface application), timing, and setbacks for land application as well as regulatory requirements for injection.

Response: 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. Tompkins Family Farms 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. Transferred liquid manure that is surface applied must follow the setbacks in 640.760 RSMo.

Comments were received about the location of the proposed CAFO in relation to houses/CAFOs in the area/streams etc...

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. 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 regarding the manure produced by the operation and what is to be done with it.

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. Tompkins Family Farms LLC has identified 733 acres to be used for land application. There will also be land application on neighboring land owners' fields. These fields are not owned, rented, leased, or otherwise under control of the CAFO owner. This is considered a manure transfer and the operation is required to provide the recipients of manure, litter or process wastewater a copy of the current manure analysis, the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS), and to keep records of all manure transfers. The permit application is not required to include the location of all transfers or provide the proximity of the fields to the CAFO. While the CAFO statutes and regulations require soil and foundations evaluations for the production area buildings, soil analysis for land applications fields focuses on nutrient content, crop nutrient need and the prevention of nutrient runoff.

Surface-applied liquid manure from CAFOs transferred to a third party is subject to the setback requirements established in 640.760 RSMo.

Comments were received regarding the manure calculations to estimate the amount of manure produced annually.

Response: There are several sources available that operations may use for this purpose however, there are no regulatory requirements that specify which source or size of animal to be used when calculating the estimated amount of manure produced. Manure estimates are determined by using the daily manure production values for the average weight of animals based on 365 day occupancy. Manure productions values use by Tompkins Family Farms LLC are from Midwest Plan Service – 18, Section 1, Second Edition, an accepted guidance for calculating manure based on animal type, size, and number of animals, among other factors.

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

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 a concern 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 sampling 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.

Pesticide content of animal manure is dependent on pesticide usage at each individual CAFO. Pesticides can also be land applied as part of crop production.

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 are no state or federal regulations that require manure to be tested for antibiotics, pathogens, pesticides, or metal content.

Comments were received regarding the manure storage.

Response: Manure is stored inside confinement buildings and is not exposed to precipitation or stormwater runoff. Manure storage structures are required to be designed with a minimum of 180 days of storage, but systems can be designed with extra storage capacity. State regulations prohibit stockpiling of uncovered solid manure within the production area, without runoff collection, and require weekly inspections of litter/manure storage structures for structural integrity and leaks. The design of manure storage structures of Tompkins Family Farms LLC exceed this requirement.

Comments were received regarding Tompkins Family Farms LLC 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 whether owned, rented, or leased, are not required to be included in the CAFO's NMP. The Department has reviewed the required elements of the Tompkins Family Farms LLC NMP and meets regulatory requirements. Compliance with their NMP is reviewed during inspections.

Comments were received regarding the neighbor notice/comment period.

Response: All Class I CAFOs are required to meet neighbor notice requirements in Section 640.715 RSMo. Tompkins Family Farms LLC sent notifications to the adjoining property owners that met the statutory requirements on April 4, 2020, initiating the neighbor notice process. Section 640.715 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 April 30, 2020, and the comment period ended on May 30, 2020. 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 about runoff from land application fields getting on to adjoining property and who is responsible for any environmental impacts.

Response: Discharges of manure to waters of the state resulting from land application of manure are not allowed, except where it is an agricultural stormwater discharge. Any such discharge 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.

If the CAFO is not conducting the application and the application is not on fields under their operation control, they are not responsible for misapplication or spills that occur during transportation or application of manure on other people's property. 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 is a civil agreement between those parties.

Comments were received that there are other/too many CAFOs in the area.

Response: The Department acknowledges the community's concern; however, there are no regulations for separation distance between CAFOs. 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 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 permit 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 the Kansas City Regional Office to report an environmental concern. Reported discharges and environmental concerns are promptly investigated by the Department.

Comments were received regarding mortality management at Tompkins Family Farms 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. Tompkins Family Farms LLC will compost the mortalities in a building with a concrete floor south of the production buildings.

Comments were received about composting of mortalities.

Response: Composting is a safe and effective method of managing mortalities. High temperatures created during to the composting process inhibit insect larvae and eliminate pathogens. Covering the mortalities with sawdust or other material adsorbs leachate, controls odors and prevents rodent and pest problems. The specific carbon material to be used in the composter is subject to change, depending on site conditions, site demands and material availability. Composting areas must remain no-discharge, in accordance with the terms of the permit. CAFO applications must include a general description of the mortality management system and the mortality management system must be constructed and operated in accordance with the application regulations and permit conditions.

Comments were received concerning the CAFO's water source.

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

Comments were received regarding whether the CAFO owner or operators will live on-site or nearby.

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 relating to health issues, those associated with the CAFO and concerns associated with the agricultural use of pesticides.

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 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 made relating to community involvement in the permitting Tompkins Family Farms LLC.

Response: The Department is required to accept written comments for thirty days after the receipt of application for an operating permit, in accordance with 640.715 RSMo, a statute established by the Missouri Legislature. All comments received during the neighbor notice period are reviewed and considered during the CAFO application review process.

Comments were received relating to pest issues.

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 may fall under the jurisdiction of the Missouri Department of Health and Senior Services.

Comments were received about noise, local traffic conditions, dust and maintenance of the roads due to the traffic from Tompkins Family Farms 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 animal feeding operations may have impacts on residential property values and potential claims or issues under 537.295 and 537.296 RSMo.

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.

Questions were received about potential third-party claims or lawsuits from the neighbors against the CAFO.

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 cannot offer legal advice in response to these questions. You may wish to consult with a private attorney on this matter.

Comments were received regarding the quality of life.

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.

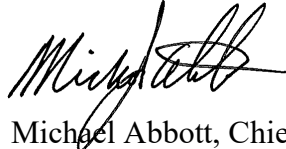
Conclusion

The Department has carefully reviewed the Tompkins Family Farms LLC application for a new permit along with 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 was issued to Tompkins Family Farms LLC on July 7, 2020. This permitting decision may be subject to an appeal in accordance with 621.250 RSMo.

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 the CAFO team at 573-522-4502, via email at CAFO@dnr.mo.gov, or by mail at P.O. Box 176, Jefferson City MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM



Michael Abbott, Chief
Operating Permits Section

MJA:gwv

c: Tompkins Family Farms LLC