

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

July 13, 2016

**Clean Water Commission Order of Rulemaking
10 CSR 20-6.300 Concentrated Animal Feeding Operations**

Issue: The Department has prepared an Order of Rulemaking for the Concentrated Animal Feeding Operation (CAFO) regulation with an anticipated effective date of October 30, 2016.

Background: The Department is proposing this rule amendment to align state regulation with amendments to section 644.051 RSMo. enacted by HB28 on August 30, 2013. This revision changed the construction permit requirements for industrial facilities. The rulemaking was discussed in two stakeholder workgroup meetings held on November 14, 2013 and January 28, 2014.

The Regulatory Impact Report (RIR) was open for public comment from October 19, 2015 through Dec 21, 2015. No comments were received on the RIR. The proposed rule amendment was placed on public notice on March 1, 2016 and lasted for 90 days ending on May 18, 2016. A public hearing was conducted on April 6, 2016.

During the public hearing, three persons provided verbal comment on the proposed rule. Two comment letters were received during the public notice period on the proposed rule consisting of 13 individual comments. In response to comments received during the public hearing and public notice period one minor change was made to the proposed rule.

Recommended Action: Adoption of the proposed Order of Rulemaking amending 10 CSR 20-6.300, Concentrated Animal Feeding Operation.

Suggested Motion Language: "I move the Commission adopt the proposed Order of Rulemaking for 10 CSR 20-6.300, Concentrated Animal Feeding Operation."

List of Attachments: Order of Rulemaking for 10 CSR 20-6.300.

Title 10—DEPARTMENT OF NATURAL RESOURCES
DIVISION 20—Clean Water Commission
Chapter 6—Permits

ORDER OF RULEMAKING

By the authority vested in the Secretary of State under section 536.023, RSMo 2007, the Department of Natural Resources amends a rule as follows:

10 CSR 20— 6.300 is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2016 (41 MoReg 308-321). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule amendment was held April 6, 2016. The public comment period ended May 18, 2016. The Department of Natural Resources received three (3) comments on the proposed amendment at the public hearing and twelve (12) comments pertaining to the rule were received via e-mail or letter.

COMMENT #1: Public Hearing - Mr. Robert Brundage, representing Missouri Pork Association and Missouri Agribusiness Association; -I have been involved with CAFO rulemaking since the first rule was enacted in 1996. There is a need to revise the regulations primarily in reaction to HB28. I would ask you to go ahead and move this regulation forward...there is a lot of confusion when you apply for a permit as you're required to do. Department staff has to decide which parts of the regulation do not apply anymore and, trying to explain that is very confusing. This will clarify the process and make it clear and better for department staff and everyone involved.

RESPONSE: No changes were made as a result of this comment.

COMMENT #2: Public Hearing - Ms. Leslie Holloway representing Missouri Farm Bureau; - I want to talk about one specific provision of the proposed rule before you. This new language would require that applications for general operating permits be submitted at least 90 days prior to the start of the operation, applications for site-specific operating permits to be submitted at least 180 days prior to the start, and then application shall include at a minimum the following documents. The first item is that the title page of the engineering report or similar document include the name of the operation, date report was prepared, name and address of firm preparing report, seal and signature of the engineer, and a statement saying the project was designed in accordance with 10 CSR 20-8.300 and 10 CSR 20-6.300. The new language under 6.300 specifies that there would have to be the seal and approval from the engineer that says this facility was designed in compliance with the manure storage requirements.

RESPONSE AND EXPLANATION OF CHANGE: When HB28 was enacted the department developed a "Draft Operating Permit Process" which included the requirement of a P.E seal and statement saying the project was designed in accordance with 10 CSR 20-8.300 and 10 CSR 20-6.300. The purpose of this is to show compliance with Section 644.051 RSMo., which requires all point sources to be designed by a P.E. registered in Missouri in accordance with the Commission's design rules, which in this case is 10 CSR 20-8.300. For this reason, the requirement has been included with this amendment to the regulation. As a result of this comment the language "and 10 CSR 20-6.300" has been removed. This amended

rulemaking contains only operating permit requirement. Design requirements for CAFOs are in 10 CSR 20-8.300.

COMMENT #3: Public Hearing - Mr. Darrick Steen representing Missouri Corn Growers Association and Missouri Soybean Association; - Today, I'm obviously here to provide some comment on behalf of those organizations in general in support of this proposed rulemaking, 10 CSR 6.300. As it's been mentioned, this particular rulemaking is in direct response to House Bill 28 which was signed by the governor in 2013. That made a number of very significant changes to the permit process for CAFOs. That has certainly created some confusion over the last three years for stakeholders and for permittees, as the law certainly says something quite different than the regulations as it relates to certain types of permits, specifically construction permits. So to the extent that we can get this rule moving forward and on the books quickly, that would certainly be good for everyone involved, and we encourage that to happen. In general, I don't have any specific technical comments and would just like to encourage that the rule be approved in July at the next meeting.

RESPONSE: No changes were made as a result of this comment.

COMMENT #4: Mr. Stephen Jeffery - Proposed additional language to 10 CSR 20-6.300(3)(E) that reads, "Balance sheet and income statement for the applicant prepared by a certified public accountant showing the applicant has sufficient assets to serve as a continuing authority in accordance with 10 CSR 20-6.010(3)." This would require that any applicant for a CAFO operating permit submit a balance sheet and an income statement prepared by a certified public accountant as part of its application package. The purpose of requiring these commonly utilized financial documents is for the applicant to provide "proof" that it is financially viable to operate, maintain, and modernize its proposed CAFO facility, as required by the Continuing Authority Rule, 10 CSR 20-6.010(3).

RESPONSE: No changes were made as a result of this comment. Continuing authoring requirements are contained in 10 CSR 20-6.010. Discussions and any proposed revisions to continuing authority requirements would need be addressed during stakeholder meeting(s) for the revision of that regulation.

COMMENT #5: Missouri Pork Producers (MPA) - Mo. Reg. pg. 310. Subsection (1)(B).19 – "Process Wastewater" definition. The definition has a new sentence at the end concerning water that "comes into contact with raw materials, products or byproducts feed, milk, eggs, or bedding." Although this sentence is found in the federal definition of process wastewater, this sentence was purposely omitted by the Commission during the last rulemaking to prevent stormwater coming into contact with incidental dust from the operations (such as dust from ventilation fans, from being considered process wastewater). Therefore, we request this sentence not be included – or if it is included, an additional sentence be added to clarify that dust outside barns cannot be the source of process wastewater.

RESPONSE: No changes were made as a result of this comment. The language referred to in this comment is being added to make the definition of "process wastewater" consistent with the definition in the federal regulations. The department continually monitors and updates inspection protocols to include regulatory and procedural changes to the extent they pertain to compliance inspections. The department uses discretion in determining the source of discharges whether they are process wastewater or stormwater.

COMMENT #6: Missouri Pork Producers (MPA) - Mo. Reg. pg. 310. Subsection (1)(B).23 – Why is the definition "Waste Management System" being added? Where did the definition come from? Should it be limited to the production areas? Does it also apply to land application areas?

RESPONSE: No changes were made as a result of this comment. The definition is being added because the term is used in regulations and in CAFO general permit templates. The term was defined originally in the MOG010000 and MOGS10000 general permit templates in 2013 as a result of a public comment. The definition does apply to production areas and land application areas.

COMMENT #7: Missouri Pork Producers (MPA) - Mo. Reg. pg. 311. (2)(D) – Exemptions. The exemptions in subsection (D) should be retained, especially the exemptions for pilot projects and minor piping changes. If the exemptions are being transferred to 6.010, the department should issue guidance that these exemptions are being maintained and will be valid even if there is lag time before 6.010 is revised to include these exemptions.

RESPONSE: No changes were made as a result of this comment. The exemption for pilot or demonstration projects is already contained in 10 CSR 20-6.010(1)(B)8. The construction activity exemptions that are being removed do not require construction permit in accordance with Section 644.051 RSMo.

COMMENT #8: Missouri Pork Producers (MPA) - Mo. Reg. pg. 312. Subsection (2)(E).2 refers to the requirements for an operating permit application. In subparagraph A., it requires the title page of an engineering report sealed by an engineer and a statement indicating the project was designed in accordance with the design regulation 8.300 and 6.300. This requirement is inconsistent with the requirements set forth in section 644.051, RSMo. Revisions to this section enacted by H.B. 28 (2013) do not require engineering documents be submitted to the MDNR nor does it require that the engineering documents be sealed prior to the application for an operating permit being submitted to the MDNR. Therefore, a CAFO operator could apply for the operating permit, get the operating permit and then hire an engineer to design the facility and seal the plans.

RESPONSE: An engineer's seal is required to show compliance with Section 644.051 RSMo. The Form W – Concentrated Animal Feeding Operation (CAFO) Permit Application also has a place for the engineer's seal that will also meet this requirement. Engineering documents are not required to be submitted with a CAFO operating permit application.

Section 644.051 RSMo., requires “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 commissions design rules”. This requirement is needed to show compliance with this statute. A permit cannot be issued to a facility that is not in compliance with the Missouri Clean Water Law and regulations.

As a result of this comment the language in paragraph (2)(E)2A has been revised to provide clarification.

COMMENT #9: Missouri Pork Producers (MPA) - Mo. Reg. pg. 311-312. Subsection (2)(E). Does the engineer's seal apply only to the Title page referenced in subsection (2)(F)2.A? Does the engineer's seal apply to any other subsections ((2)(E)2.B through F? If so, clarify.

RESPONSE AND EXPLANATIOIN OF CHANGE: The engineer seal is to show compliance with Section 644.051 RSMo. and 10 CSR 20-8.300. The requirements in paragraphs (2)(E)2.B-D are included in 10 CSR 20-8.300. Paragraphs (2)(E)2.E-F are requirements in 10 CSR 20-6.300 and do not require an engineer seal.

COMMENT #10: Missouri Pork Producers (MPA) - Mo. Reg. pg. 312. Subsection (2)(E)2.E.(II) State No-Discharge Permit. This paragraph requires applicants for a state no-discharge permit to submit a nutrient management plan (NMP). This is partially inconsistent with the application that says “export

only” facilities do not need to submit an NMP. Does 6.300 make it clear that a state no-discharge permitted CAFO may change its NMP at any time without a need to amend the permit, or undergo neighbor notice or public notice?

RESPONSE: No changes were made as a result of this comment. Subsection (2)(E)2.E.(II) requires submission of an NMP with an application for a “new” state no-discharge permit (MOGS10000). 10 CSR 20-6.300(3)(G)1 requires all permitted operations to develop and implement a NMP that meets the requirement in 10 CSR 20-6.300(5). The current version of Form W – Concentrated Animal Feeding Operation (CAFO) Permit Application states “If the operation is export only, completing Parts 5-11 meets this requirement.”

10 CSR 20-6.300(5) requires any revisions to the NMP must be submitted to the department for review with the changes from the previous version identified for NPDES permits only. A public notice is required if the NMP revisions result in substantial changes to the terms of the NMP incorporated into a NPDES operating permit.

COMMENT #11: Missouri Pork Producers (MPA) - Mo. Reg. pg. 312. Subsection (2)(F)4. requires submission of an NMP when renewing an NPDES operating permit. To be clear, submission of a NMP required when renewing a state no-discharge is not required?

RESPONSE: No changes were made as a result of this comment. Submission of a NMP is not required with the renewal of a state no-discharge permit.

COMMENT #12: Missouri Pork Producers (MPA) - Mo. Reg. pg. 313. What is the MDNR trying to clarify by adding new text in subsection (3)(B)2?

RESPONSE: No changes were made as a result of this comment. When an operation expands but does not increase in class size, the buffer distance is only applicable to the new confinement buildings and new lagoons. The existing confinement buildings and lagoons complied with the buffer distance at the time they were initially permitted. If an operation expands to a larger class size the buffer distance of the larger class size is applicable to all new and existing buildings and lagoons unless they were in existence prior to June 25, 1996.

COMMENT #13: Missouri Pork Producers (MPA) - Mo. Reg. pg. 314. Are state no-discharge permitted CAFOs required to submit an annual report? The annual report section seems to only require an annual report for NPDES operating permits.

RESPONSE: No changes were made as a result of this comment. The requirement for state no-discharge permittees to submit an annual report is included in the permit. This issue can be addressed during the next renewal of the MOGS10000 master general permit template, which expires on January 27, 2018.

COMMENT #14: Missouri Pork Producers (MPA) - Mo. Reg. pg. 315. Subsection (4)(A).2. This subsection should be deleted. No discharge operations do not have subsurface discharged so effluent limitations are not applicable.

RESPONSE: Missouri Pork Producers (MPA) - No changes were made as a result of this comment. The definition of “Waters of the state” in 10 CSR 20-2.010(82) includes both surface and subsurface waters. Any discharge to waters of the state that are not allowed for by a National Pollution Discharge Elimination System (NPDES) permit is a violation of Water Quality Standards and subject to compliance and enforcement actions.

COMMENT #15: Missouri Pork Producers (MPA) - General comment. Does 6.300 make it clear what the NMP requirements are for an export only facility? The MDNR has considered parts of the application to be satisfy some the NMP requirements. This may not be clear.

RESPONSE: No changes were made as a result of this comment. 10 CSR 20-6.300(3)(G)1 requires all permitted operations to develop and implement a NMP that meets the requirement in 10 CSR 20-6.300(5) and to incorporate the requirements in (3)(G)2., which is only required when manure, litter, or process wastewater is applied to land application areas as defined in 10 CSR 20-6.300(1)(B)13. Export only operations do not apply to land application areas. Therefore, their NMP is not required to comply with subsection (3)(G)2 or, subsections (G), (H), and (I) of 10 CSR 20-6.300(5).

COMMENT #16: Missouri Pork Producers (MPA) - General comment. The draft regulation seems to delete all references to a construction permit. What about CAFOs that propose to construct an earthen storage basin? What are the construction permit requirements?

RESPONSE: No changes were made as a result of this comment. All references to construction permit application requirements have been moved to 10 CSR 20-8.300. CAFOs that plan to construct an earthen basin are required to obtain a construction permit in accordance with 10 CSR 20-8.300.

10 CSR 20-6.300 Concentrated Animal Feeding Operations

(2)(E)2.A. Title page of engineering report or similar document sealed by a professional engineer including name of the operation, date the report was prepared, name and address of firm preparing the report, seal and signature of the engineer, and a statement indicating the project was designed in accordance with 10 CSR 20-8.300;

