

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

January 4, 2012

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

Issue: The Permits and Engineering Section has prepared an Order of Rulemaking for the Concentrated Animal Feeding Operation (CAFO) regulation with an anticipated effective date of April 30, 2012.

Background: The Department is proposing this rule amendment to align state regulation with federal regulation and provide additional clarification to existing state regulations. Environmental Protection Agency's 2008 final CAFO rule contains provisions and standards that are more stringent than Missouri's current regulations. The rulemaking was discussed in seven stakeholder workgroup meetings beginning in 2008 with the last two meetings held on September 28, 2010 and October 26, 2010.

The Regulatory Impact Report (RIR) was open for public comment from July 18, 2011 through September 19, 2011. No comments were received on the RIR. On August 15, 2011 this proposed amendment was placed on public notice. The public comment period lasted for 90 days beginning on August 15, 2011 and ending on November 16, 2011. In addition, a public hearing was conducted on November 2, 2011.

During the public hearing, one person provided verbal comment on the proposed rule. Six public comment letters were received on the proposed rule. Of those six letters, one letter included the submittal of 40 individual comments which were prepared based on an early strawman draft of the proposed rule (developed in 2010 as part of the workgroup process). While the comments did not always follow the proposed rule well, the Department provides a written response to each of them. Changes proposed based on comments are described in the responses and listed at the end of the order.

Recommended Action: The Department recommends the Commission approve the changes to the proposed text and approve the filing of the Order of Rulemaking.

Suggested Motion Language: "The Commission approves the filing of the 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
Proposed Amendment Published in the August 15, 2011 *Missouri Register*
Comment Letters

**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 August 15, 2011 (36 MoReg 1909-1926). 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 November 2, 2011. The public comment period ended November 16, 2011. The Department of Natural Resources received three (3) comments on the proposed amendment at the public hearing and sixty-one (61) comments pertaining to the rule were received via e-mail or letter.

COMMENT #1: Missouri Coalition for the Environment (MCE) - No rulemaking regarding CAFOs should move forward until the public has been provided with accurate information on CAFOs in Missouri. It is impossible to make informed comments without information. Unfortunately, the only publicly available GIS file on AFOs is inaccurate in terms of recording the functional capacity in animal units for all permitted CAFO operations in Missouri. The publicly available dataset on CAFOs has been modified to reflect operations that may have been shut down over violations, lawsuits, etc. but could very well be producing meat and polluting our waters despite the fact that this information has not been made accurately and fully available to the public. For example, of the 150 operations found to be in the alluvial plane, 101 operations show 0 in the column of PF_TOTALAU, despite the fact that these are in fact some of the largest operations in the state of Missouri. Without accurate information we cannot fully participate the public notice process and this file should be kept updated on a monthly basis and available to the public at all times. It is highly likely that many of the 101 operations that report zero animal units are currently in operation, but the data does not reflect this and has apparently not been updated in almost a year. It is impossible for the public to participate in this process without accurate information on the impacts purportedly being mitigated.

RESPONSE: No changes were made as a result of this comment. All information and data maintained by the department is public information and available for review in accordance with the Missouri Sunshine Law. To the extent possible and practical, the department strives to maintain permit data in a spatial GIS file form; however, given department resource constraints, it may not always be possible nor practical to maintain and update spatial data in the manner requested.

COMMENT #2: MCE - The department should explain why these operations can't be required to meet the same consistent standards as a new operation would be held to, despite the fact that they are just as risky and dangerous to public health and new or expanded operations. One of the major reasons to get an NPDES permit is to use technology and improved methods to eliminate pollution in our waters, the permit renewal process is designed to allow for operations to be brought into compliance with current

regulations. This is the regulatory process prescribed by the Clean Water Act, and although Federal Regulations may not always make sense, this process is perfectly reasonable and is necessary for us to gradually bring the extensive water pollution in Missouri under control and to give nature a chance to coincide with our social and economic goals.

RESPONSE: No changes were made as a result of this comment. The requirements in the proposed 10 CSR 20-8.300 rule will only apply to new and expanding CAFOs. EPA's New Source Performance Standard (NSPS) for CAFOs in 40 CFR 412 apply only to new sources and so too will the proposed 8.300 rule.

COMMENT #3: MCE - Definition of a 'chronic weather event' is vague as it is not clear what '...the 1 in 10 year return rainfall frequency over a 10-day, 120 day, and 365 day operating period...' is. It is not clear whether 1 in 10 means the maximum event, or perhaps average event. This definition should be improved by indicating how a 'chronic weather event' is determined and its declaration is observed. This criticism also holds for condition (4)(A)(5).

RESPONSE AND EXPLANATION OF CHANGE: The definition for "chronic weather event" has been changed by removing the first sentence. For clarification, the intensity of a storm can be predicted for any return period (i.e. 1 in 10 year) and storm duration (i.e. 10-day, 90-day, 180-day, and 365 day) from historic data. The term *1 in 10 year storm* describes a rainfall event which is rare and is only likely to occur once every 10 years, so it has a 10 percent likelihood of occurring any given year. This storm event(s) is defined as the Chronic Weather Event and this term is used later in this proposed rule.

COMMENT #4: MCE - The definition of 'discharge or propose to discharge' contains an exception: "Discharges of agricultural stormwater are a non-point source and therefore not included within this definition." This exception is too expansive and unlawful because it could be interpreted as applying to land application discharges in stormwater from fields where the application rate exceeded a rate that would ensure appropriate agricultural utilization or when the CAFO operator has not complied with BMPs during land application operations, or when the nutrient management plan used by the CAFO operator did not comply with the nutrient technical standards. Because the Missouri rules do not define precisely what is meant by "agricultural stormwater," further uncertainty about land application discharges is introduced. Any such exception for allowable or unregulated discharge should itself be qualified by the CWA legislative exception language. The agricultural stormwater exception should be amended to apply only when manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in section 122.42(e)(1)(vi) through (ix). Without this qualifier, the proposed Missouri discharge definition does not comport with the federal law requirements for agricultural stormwater exceptions from discharge.

RESPONSE: No changes were made as a result of this comment. However, please note that the term and the definition for "Discharge or propose to discharge" has been revised as a result of a later comment. For clarification, section (2)(E)(5) provides the clarity on what is meant by "agricultural stormwater".

COMMENT #5: MCE - MDNR is altering 'dry litter' to be 'dry process waste.' However, in making the changed definition, MDNR removed the final phrase of the dry litter definition... "...and is not exposed to precipitation or storm water runoff during storage." Dry waste cannot be sustainable as dry if it is allowed to be exposed to precipitation. The problem with MDNR making a change like this is that it is sometimes unpredictable what the consequence will be elsewhere in the MDNR regulations. Outdoor management, transfer and storage of solid CAFO waste will also a problematic matter and create potential for discharge when large areas are exposed to precipitation which must then be stored for treatment and land application. The fundamental concern is that MDNR may transfer certain types of wastes, discharges or

conduct to be outside of CWA-originated regulatory jurisdiction, or authorize operator conduct that constitutes less than the required best management practice technology-based effluent limitations.

RESPONSE: No changes were made as a result of this comment. The definition at Section (1)(B)(11) in the proposed rule sufficiently defines this term for the purposes of this rule. The remaining portion of this comment is outside the scope of this rule, as it relates to issues that would be addressed in an operating permit.

COMMENT #6: MCE - MDNR is proposing to delete the present (1)(B)(14) definition of ‘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.” If my recall is correct there is federal CWA case law on the matter of ‘man made conveyances.’ I don’t presently know how this deletion would affect application of that case law. However, the present CAFO rule does not have a specific definition of what the word ‘discharge’ means. The MDNR striking of the definition of the ‘man made conveyances’ might potentially be interpreted by regulatory parties to mean that a discharge of aqueous CAFO waste and/or process wastewater must be proven to reach ‘waters of the U.S.’ even when an agricultural ditch or other conveyances is the pathway to ‘waters of the U.S.’ The striking amendment also erases the concept of ‘improper land application’ that runs off. If an operator discharged to an agricultural ditch as a ‘man made conveyance,’ that operator might be tempted to deny there was a discharge to waters of the U.S. if the aqueous discharge did not actually achieve flowage to a blue line stream as shown on a topo map (i.e. dry ditch condition for extended distance to blue linestream).

RESPONSE: No changes were made as a result of this comment. The term “man-mad conveyance” is a term that is not used anywhere in this proposed rule and therefore does not require a definition.

COMMENT #7: MCE - No discharge Provisions at (1)(B)(15) describe ‘no discharge operation’ and here again MDNR proposes an unqualified and thus over-broad exemption for agricultural stormwater. In order to be Ag stormwater, a CAFO owner/operation must have land-applied CAFO waste nutrients in compliance with a nutrient management plan that ensures appropriate agricultural utilization of applied nutrients. MDNR’s exemption again is too broad.

RESPONSE: No changes were made as a result of this comment. Section (2)(E)(5) in the rule provides the clarity on what is meant by “agricultural stormwater”.

COMMENT #8: MCE - MDNR is proposing the strike the final sentence in EPA’s definition of process wastewater in a manner that deregulates silage leachate and other aqueous wastes. This is objectionable. See my prior memorandum for a discussion of this issue.

RESPONSE AND EXPLANATION OF CHANGE: The definition of “Process Wastewater” has been edited to include animal production waste materials.

COMMENT #9: MCE - The definition of ‘production area’ contains a qualifier saying that the “non-vegetated portions” of an operation....where CAFO waste activities are carried out.... such a qualifier is improper because it means the presence of vegetation in a portion of a production area operation would then not be a portion of the production area under MDNR’s qualified definition.

RESPONSE: No changes were made as a result of this comment. The definition is sufficiently clear in explaining the definition of “production area”.

COMMENT #10: MCE - Defining 'vegetated buffer'... saying they are a 'narrow' strip of vegetation is too vague to consider this definition to be a part of a best management practice.

RESPONSE: No changes were made as a result of this comment. The definition is sufficiently clear in explaining the definition of "Vegetative Buffer". The application of a vegetated buffer is used later in the rule at (3)(G)2.(E) which stipulates the buffer be 35 feet wide.

COMMENT #11: MCE - The problem with the way this permit coverage rule is written is that it does not capture/cover requirements for permit amendments associated with CAFO NMP changes associated with new land application fields, fields newly requiring phosphorus-based planning or fields which must no longer receive applications of CAFO waste because of excessive soil test phosphorus. Only alternations to production area physical elements seem to be covered. Such failure to consider land application-related permit modification changes can be view as undermining the Second Circuit Waterkeeper decision requirements and EPA's subsequent year 2008 rulemaking.

RESPONSE: No changes were made as a result of this comment. Section (3)(A)2. of the proposed rule incorporated by reference the specific federal regulation that addresses the issue referenced in this comment.

COMMENT #12: MCE - The 'in addition' clause in the second part of Section (2)(D)(2) has the effect of improperly restricting the authority of MDNR to require smaller AFO production area facilities that discharge, or that have land application discharges, from being required to get discharge permits.

RESPONSE: No changes were made as a result of this comment. EPA and the department use non-permit strategies and tools to work with owners and operators of smaller AFOs to ensure that they do not meet the criteria that would result in their being defined or designated as Small or Medium CAFOs. For this reason, EPA regulation and this rule purposely affords a higher standard of permit applicability for smaller AFOs.

COMMENT #13: MCE - Because 'small scale pilot projects' and 'demonstration projects for beneficial use' are not defined and are not known as to their consequences for discharge, exemptions for these should not be allowed until there is further clarification of the impact of the section.

RESPONSE: No changes were made as a result of this comment. The proposed rule affords a sufficient level of review by stipulating that written department approval must be acquired to implement a pilot project.

COMMENT #14: MCE - A comma is missing after the first phrase, 'dry process waste at section (2)(E)2.

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

COMMENT #15: MCE - The word 'eight' should actually be 'eighty' at section (3)(A)(4)

RESPONSE: No changes were made as a result of this comment. The word "eight" could not be found in the proposed rule.

COMMENT #16: MCE - The proposed rule (3)(A)(5) says an 'engineering certification of the completed system shall be submitted prior to operating permit coverage,' but there are no requirements provided for what the engineering certification must address. The rule should specify exactly what elements are

required for such an engineering certification and one such requirement should be a statement by the engineer on whether the facility as constructed comports with the plans and specifications that were submitted for any construction permit application, and that the registered professional engineer states whether he has personal knowledge to support any such statements. This provision is written in a bizarre manner that reflects the tendency throughout to fail to identify who makes the decision and who specifically is bound by such a decision. Saying that "All construction permit applications shall require engineering documents..." is awkward. Instead, the rule should indicate what elements are required to be present in applications submitted by the proposed CAFO owner/operator.

RESPONSE: No changes were made as a result of this comment. The department could not find this quoted statement in the proposed rule. The proposed rule and other related provisions in 10 CSR 20-6 sufficiently address this concern.

COMMENT #17: MCE - This provision states: "The department will not examine the adequacy of efficiency of the structural or mechanical components of the waste management systems. The issuance of permits does not include approval of such features." Any practical inquiry into whether a CAFO owner/operator will comply with MDNR's rule is inextricably intertwined with the need to examine the structural or mechanical components of the CAFO waste management system. This seems to be a uniquely MDNR approach at abdicating its clean water regulatory authority over CAFO production area physical elements in a manner contrary to the purposes of the CWA.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking.

COMMENT #18: MCE - At (3)(A)5. the clause, "unless specifically designed to handle them" should be struck in order to make the ban on disposal in wastewater systems enforceable. The only exception would be for an exterior composting operation whose physical features are inextricably intertwined with a leachate/runoff collection system.

RESPONSE: No changes were made as a result of this comment. The department recommends the proposed rule language as written.

COMMENT #19: MCE - Adding the provision (3)(B)(5) makes the preceding buffer requirements virtually meaningless. This paragraph contains no standards for decision making and no provides no notice to the public or CAFO facility neighbors who would be affected by such a decision. Because there are no standards for decision making, MDNR decisions under this section may be arbitrary and capricious. The procedure for allowing less than required buffers contains no public participation or notice to the public.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking. This is a statutory provision found in state law at 640.710 RSMo.

COMMENT #20: MCE - Section (3)(C) outlines notice and partial decision-making requirements for construction permit applications. MDNR envisions a required notice only to adjacent property owners, MDNR and a county board, and this notice would be sent by the CAFO applicant. The notice would provide for a 30 day comment period for MDNR to receive comments on the permit application. The 30 day period would begin on the day that the CAFO applicant submittal was received by MDNR. However, there would be no notice to the public of the actual date when MDNR received the application, so the public would not have a notice with a deadline date for the comment period. There is no indication of any public comment or public notice being proposed for a draft construction permit or other notice.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking. This is a statutory provision found in state law at 640.715 RSMo.

COMMENT #21: MCE - There is no requirement that land application equipment be subject to annual spreading rate calibration requirements. The weekly inspection requirement for process wastewater impoundments should be altered to ensure that facilities operating impoundments near their operating capacity or with little or no freeboard cannot use the weekly inspection frequency as a defense for failure to document overflow/discharge or operations of the lagoon in contradiction to CAFO owner/operator duties. The weekly inspection requirement for production area wastewater storage must also be amended to include physical inspections and the presence of any discharges, the physical condition of the impoundment, and maintenance of requirements prohibiting vegetative or animal intrusion to vegetated lagoon embankments. There is no requirement to install and operate a rain gage and to collect and record valid daily precipitation data. There is no requirement stated to conduct soil test every three years for fields receiving CAFO waste. Nothing in this rule provision provides requirements to conduct inspections and monitoring shown for all such elements indicated in the Missouri CAFO Nutrient Management Technical Standard. For example, no requirement can be located that requires that field soil test information be made available in a permit application that contains an NMP. There is no requirement for a CAFO permittee to monitor and record the date, weather conditions, identify of applied waste, actual application rate in tons/gallons per acre and total applied each day. This constitutes a serious deficiency in the proposed draft rules. Nothing here requires the CAFO owner/operator to inspect and monitor land spreading field tile water discharges to ensure that animal waste and process wastewater spread in fields is not discharged through field tile. MDNR has no technical standards that reflect BAT/BPT to control process wastewater intrusion into agricultural field tiles. Experience in the Midwest suggest that limiting field application rates to no more than 6000 gallons per acre will prevent most field tile discharge problems along with ensuring that waste applications are not made during times when field tiles are discharging water.

RESPONSE: No changes were made as a result of this comment. Many of these comments are outside the scope of this rulemaking as they request a level of specificity appropriate only for the operating permit itself. Other portions of this comment are addressed within the Missouri CAFO Nutrient Management Technical Standard (NMTS). The NMTS is incorporated by reference into the rule and must be followed when developing a Nutrient Management Plan in accordance with section (5) of the proposed rule.

COMMENT #22: MCE - The land application record-keeping at (3)(E)(2) does not require recordkeeping and reporting the amount waste applied to each field for each day of field application in tons per acre and gallons per acre and in total tons and gallons applied to each field for each day of application. There is no requirement to operate a rain gage and collect and record the data. The requirement to record weather conditions is not specific as to the weather factors to be noted. Weather and field condition tracking should address daily precipitation, high and low temperature, whether fields planned for imminent operational spreading are frozen, snow-covered or saturated.

RESPONSE: No changes were made as a result of this comment. Many of these comments are outside the scope of this rulemaking as they request a level of specificity appropriate only for the operating permit itself. Other portions of this comment are addressed within the Missouri CAFO Nutrient Management Technical Standard (NMTS). The NMTS is incorporated by reference into the rule and must be followed when developing a Nutrient Management Plan in accordance with section (5) of the proposed rule.

COMMENT #23: MCE - The annual report provision (3)(F) does not require the owner/operator to certify compliance of the facility with its nutrient management plan and permit, and to require reporting of discharges to surface waters from land application. No individual spreading field-specific information is provided in the annual report. Nothing provided in the annual report addresses whether the facility has

complied with the NMP and with all required best management practices on a field by field basis. With the very limited required elements in the annual report, there is no way to verify or determine whether the owner/operator has complied with their nutrient management plan, whether they exceeded application rates in the plan in actual practice, etc.

RESPONSE: No changes were made as a result of this comment. Many of these comments are outside the scope of this rulemaking as they request a level of specificity appropriate only for the operating permit itself. The proposed rule incorporates and closely mirrors the requirements found in EPA regulation. Other portions of this comment are addressed within the Missouri CAFO Nutrient Management Technical Standard (NMTS). The NMTS is incorporated by reference into the rule and must be followed when developing a Nutrient Management Plan in accordance with section (5) of the proposed rule.

COMMENT #24: MCE - Review of the provisions cited for deletion in the amendatory version on p 6 of 19 is a more acceptable version of text defining agricultural storm water dischargers. The deleted language recognizes that such stormwater is exempt from discharges when the operator has complies with nutrient management practices that ensure appropriate agricultural utilization. More deleted provisions are shown on p 7 of 19. These specific provisions were previous qualifiers limiting the reach of the exemption provisions to allow MDNR to address a variety of realistic noncompliance scenarios associated with adverse CAFO design and operations. These were important qualified limitations on the reach of the exemptions and such language should be restored to the present proposal.

RESPONSE: No changes were made as a result of this comment. The department was unable to determine which specific deleted provisions the commenter was referring to in this comment.

COMMENT #25: MCE - The first sentence at (3)(G)(2) strikes the words 'application rates for' thus rendering the rest of the sentence awkward and odd. This provision intrinsically attacks the requirement that there be no discharge from land application operations. A nutrient management technical standard that only calls for application rates whose effect is only to minimize and not prevent discharges to surface waters beyond application field boundaries does not provide sufficient effluent control to comply with the federal CWA requirement for effluent limitations reflecting BAT/BPT. The provision attempts to make a nutrient management technical standards established by the Clean Water Commission be incorporated by reference, but such reference must be to a specific enactment and citation by the Clean Water Commission. No such identification of any specific document is provided in the text of the rule. As we previously noted in prior comments, MDNR has not subjected the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard adopted on March 4, 2009 to formal Missouri administrative rule adoption processes. The Missouri Nutrient Management Technical Standard (MO NMTS) itself contains a statement: "NOTE: An operation may choose to use alternative protocols other than those established in this standard, however, it must be able to demonstrate that such alternative protocols provide both a reliable and technically valid basis for achieving the nutrient management objectives." The effect of this statement is to render the protocols and procedures of the MO NMTC to be nothing less than a non-enforceable, nonrule document. All effluent limitations for CAFOs must be enforceable and verifiable, but this cannot be the case for the primary 'standards' document affecting site-specific nutrient management plan development and implementation in the state.

RESPONSE: No changes were made as a result of this comment. The proposed rule complies with federal CAFO effluent regulations at 40 CFR 412 and paragraph (3)(G)(2) in the proposed rule closely mirrors 412.2(c). The NMTS was approved by the Clean Water Commission on March 4, 2009 and is incorporated by reference into the proposed rule. EPA has specifically advised states in writing through their 2003 and 2008 EPA CAFO rule to build in and allow flexibility in using alternative protocols in this manner when they are technically valid.

COMMENT #26: MCE - MDNR is deleting the requirement to have a field specific assessment of the potential for nitrogen transport to surface waters. No field or soil-specific assessment is apparently done to assess the potential of applied wastes on groundwater. Elevated nitrate concentrations in groundwater will be the result of failure to address such issues in nutrient management plans.

RESPONSE: No changes were made as a result of this comment. Nitrogen management on fields and during land application is assessed and controlled through the use of the Plant Available Nitrogen procedure found within the NMTS. The soil specific assessments found in this section of the rule pertain to a phosphorus loss risk assessment which is addressed through the Soil Test Phosphorus Rating and the Phosphorus Index found within the NMTS.

COMMENT #27: MCE - The terms, 'fields that do not have a high potential for phosphorus runoff to surface water' and 'phased implementation of phosphorus based nutrient management' are not defined in the rule and these concepts are subject to varying interpretation. More clarity is necessary to properly determine the meaning of these two terms. While 'multi-year phosphorus application' is defined at (1)(B)(14), the commentor questions whether MDNR's rules and practices actually ensure that operators do not actually apply waste in years subsequent to the 'multi-year' application and that nutrient management plans recognize the zero waste application subsequent years.

RESPONSE: No changes were made as a result of this comment. These terms and provisions were previously adopted from current EPA CAFO rules. Adherence to the required NMTS ensures operators do not actually apply waste beyond what would otherwise be allowed.

COMMENT #28: MCE - (3)(G)(2) Editing of the existing rule without due care appears to have placed the A-E subprovisions that were formerly considered to be mandatory elements of a CAFO's required submission of an NMP and made these subprovisions modify the authority of the Clean Water Commission in adopting its nutrient management technical standards. This change does not make any sense, since it is apparent the real purpose of the A-E provisions is to get CAFO-site-specific elements of the facility's site-specific Nutrient Management Plan established and these are not intended as written to be criteria for the Clean Water Commission decision on the Missouri Nutrient Management Technical Standard.

RESPONSE: No changes were made as a result of this comment. The department believes proposed rule sufficiently and appropriately explains the requirements as written.

COMMENT #29: MCE - On p. 12-13 of 19, considerable current regulatory text with several specific requirements is shown as being deleted. It is not clear that all of these authorities have been included elsewhere in the proposed text.

RESPONSE: No changes were made as a result of this comment. The department was unable to determine which specific deleted provisions the commenter was referring to in this comment as the page numbers referenced do not match the proposed rule.

COMMENT #30: MCE - We see here in this provision (4)(A)(1) that Missouri will not require preexisting CAFO operations to have their waste management facilities be subject to a requirement to demonstrate compliance with any design/operational standards provided in the proposed new 8.300 design standard rules. Note that this first subsection does not impose any effluent limitations that involve waste storage facility operation.

RESPONSE: No changes were made as a result of this general statement. See comment #2.

COMMENT #31: MCE - (4)(A)(2) “Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7).” This latter regulation features a provision at 10 CSR 20-7.015(7)(E) saying that a subsurface water quality standard rule did not apply for facilities designed and constructed to meet unspecified MDNR criteria “...provided these designs have been reviewed and approved by the department.” Note that review and approval of the design and construction of waste lagoon facilities is not only not required, but the draft 8.300 rules explicitly say the department “...will not examine the adequacy or efficiency of the structural or mechanical components of the waste management systems.” [(3)(A)] Note that consideration of whether the 10 CSR 20-7.015(7)(E) exemption from groundwater quality review under 10 CSR 20- 7.015(7)(A) depends exclusively on a two simultaneous conditions.... the first is that the department design criteria exists and second that the department has actually reviewed the designs of the facility in question. It is not clear from the rules how this site-specific second condition is verified in facilities holding general permits. MDNR allows groundwater nitrate up to the 10 mg/l limit which is widely considered to be a public health hazard at that aqueous concentration when used for drinking water. There is no groundwater criteria for ammonia or pathogens in the Missouri rule in Table A of the 10 CSR 20-7.031 Water Quality Standards. When the current groundwater condition is such that nitrate concentrations approach or exceed 10 mg/l, there is no limitation on a CAFO groundwater discharger making such problems worse. Note that the rule can potentially be interpreted to create a duty for site subsurface water monitoring. Note also, there is nothing in MDNR regulations which would prevent a CAFO owner/operator from walking away from ammonia/nitrate polluted groundwater beneath waste storage lagoons that are, or will be, taken out of service. Ammonia contained in CAFO waste will eventually be oxidized to nitrates after seepage from lagoons or from land application. Natural attenuation will also be at work, but there is no information or worst case hydrogeological analysis from MDNR justifying why such waste storage lagoon seepage must be considered benevolent and without consequence to other/neighboring uses and users of the groundwater. [The new 8.300 regulation did not have any basis shown that would examine worst case groundwater contamination and transport regimes associated with operating and abandoned waste lagoon operations.] It might be helpful to verify whether MDNR ever regulated any CAFO owner/operator under the 10 CSR 20-7.015(7) regulation. The regulation at 10 CSR 20-7.015(7)(F) is not the strongest regulation here, but it nevertheless creates some accountability features which should be placed in permits.

RESPONSE AND EXPLANATION OF CHANGE: The department inadvertently left off the “(E)” on the reference to 10 CSR 20-7.015(7). This correction has been made to the final rule. A change to the subsurface effluent regulation in 7.015 for CAFOs is outside the scope of this rulemaking.

COMMENT #32: MCE - This provision (4)(A)(4) is an adverse and potentially destructive paraphrase of the Clean Water Act agricultural stormwater exception. However any statement here without explicit mention that the CAFO must show appropriate agricultural utilization of the nutrients in the waste allows latitude around the federal agricultural stormwater definition. It would be better to reference the federal exception text than to have MDNR produce this paraphrasing.

RESPONSE: No changes were made as a result of this comment. Section (2)(E)(5) in the rule provides clarity on what is meant by “agricultural stormwater”.

COMMENT #33: MCE - This subsection (4)(A)(5) addresses chronic [wet] weather events. See also discussion under (1)(B)(5) which applies to this section as well. The draft contemplates declarations of a ‘chronic weather event’ by the U of M Missouri Climate Center which would trigger implementation of the MDNR “Wet Weather Management Practices for CAFOs.” This one page practice sheet addresses lagoons about to overflow, gives allowances for spreading on frozen or saturated ground, and other measures. This practice document is not being subjected to rulemaking, even as it is portrayed as a *de facto* best management practice during chronic weather events. Without explanation, the document states that land application to frozen or saturated soils is preferable to allowing a lagoon to overflow [this must

necessarily be considered on a site-specific basis for a valid review.]. Spreading waste liquids on frozen or saturated soils is supposed to be a non-BMP practice, but the wet weather policy embraces such a practice, and carrying out such practices creates a high probability of discharge from land application operations. Finally, the wet weather policy envisions land spreading on non- NMP, non-permitted fields. CAFOs should not be allowed to spread on new fields not in the present NMP without permit amendment, public notice and comment.

RESPONSE: No changes were made as a result of this comment. The implementation of “Wet Weather Management Practices” during chronic weather events is only allowed when storage structures are in danger of overflowing and are voluntary.

COMMENT #34: MCE - This entire section (4)(A)(6) contemplates wastewater management activities “...occurring outside of the production area systems that are not associated with land application [that] shall be identified in the CAFO’s Nutrient Management Plan.” However, the waste management activities that MDNR is attempting to consider separately from the production area must, by EPA’s definition, be considered part of the production area and subject to regulation as a production area. MDNR cannot segregate one part of a production area at a CAFO from another part, and then say that one must comply with production area requirements and the other complies with different requirements. MDNR’s approach violates EPA’s CAFO permit program rules.

RESPONSE: No changes were made as a result of this comment. This paragraph does not exist in the proposed rule.

COMMENT #35: MCE - (4)(B)(1) This provision prohibits discharge into waters of the state from the production area. However, ‘waters of the state’ includes subsurface waters in aquifers under 10 CSR 20-7.015(1)(A)(6). Waste lagoons, feedlots and other CAFO production area facilities will all discharge to groundwater through liner and soils seepage. As a result, this provision must be revised to create internal consistency with 10 CSR 20-7.015(1)(A)(6).

RESPONSE AND EXPLANATION OF CHANGE: Section (4)(B)(1) has been revised to state “There shall be no discharge of manure, litter, or process wastewater into surface waters of the state from the production area.”

COMMENT #36: MCE - At (4)(B)(2) it would be improper for MDNR not to require a source to obtain an NPDES permit in such a situation as posed by the rule.

RESPONSE: No changes were made as a result of this comment. This provision as written reflects the federal requirements found at 40 CFR 122.23(j).

COMMENT #37: MCE - The draft rule (4)(B)(3) requires a regulated party to give “....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.” However, writing the remedy required in this manner specifically precludes an appropriate response in situations in which it is either physically and/or institutionally impossible to “ensure” such a condition does not arise again.

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

COMMENT #38: MCE - (4)(B)(4-6) These sections are all objectionable because they are attempts to insulate state ‘no-discharge’ permit CAFOs from NPDES permit requirements and violation findings for failure once a discharge has occurred [and MDNR’s draft even countenances multiple discharges without considering that each such discharge is a violation. Getting certification under 40 CFR 122.24(j) as a no

discharge facility and then having a discharge is still a violation of CWA section 301(a) for unpermitted (no NPDES permit) discharge by a point source. MDNR should not create a compliance 'out' for multiple discharges and the agency must not give itself discretion to excuse CAFO point sources with discharges from the NPDES permit requirement. State CWA program elements in 40 CFR 122.24(j) were never intended to authorize as allowable the kind of CAFO multi-discharge conduct that MDNR is contemplating in the draft rules. State permit CAFOs that discharge should be required to apply for an NPDES permit within 30 days of any such discharge event.

RESPONSE: No changes were made as a result of this comment. Nothing in section (4)(B) of the proposed rule precludes or restricts in any way the department from issuing a notice of violation for a discharge from a point source; nor does it limit in any way the department's ability to take enforcement action for a violation. Nothing in this paragraph limits or restricts the departments clean water authority.

COMMENT #39: MCE - This section (4)(C) states that effluent limitations for Class II and smaller AFOs will be determined by Best Professional Judgement. However, this rule does not explain how such site-specific determinations would be addressed for general permits or whether general permits would be viable.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking.

COMMENT #40: MCE - In the federal rule, these NMP requirements are explicitly tied to the definition and declaration of BAT and BPT in the federal rules, but MDNR did not show that relationship. The site Nutrient Management Plan should be considered an effluent limitation along with all of the other BMPs contained in the NMP. The CAFO owner or operator must be accountable for achieving the level of performance shown in the criteria for what NMPs must achieve.

RESPONSE: No changes were made as a result of this comment. The rulemaking sufficiently addresses the NMP requirements, their purpose and effectiveness.

COMMENT #41: MCE - Nothing is included here (6) requires the CAFO owner/operator to conduct an assessment of groundwater contamination during closure activities for waste lagoons and to remedy any problems found.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking.

COMMENT #42: MCE - Gen permits & NMP Although MDNR staff claim their rules are intended to comply with EPA's year 2008 rulemaking, nothing in the MDNR documents really addresses EPA's post-Second Circuit Waterkeeper decision requirements for public participation at all. Under the court decision and EPA's rulemaking, terms of the NMP would be included in permits, the public would be afforded the opportunity to comment on NMPs and new procedures for certificates of coverage under general permits would into play that would provide some level of public notice and participation for certificates of coverage. None of this appears in the MDNR proposal and the failure to do so constitutes a *de facto* nullification of an important previous environmental victory as it affects MO. Failure of a state to carry out public participation requirements for this effluent source category is a serious matter that should be raised quickly with U.S. EPA water staff in Region 7.

RESPONSE: No changes were made as a result of this comment. Section (3)(A)2. of the proposed rule incorporated by reference the specific federal regulation that addresses the concerns referenced in this comment.

COMMENT #43: Tyson respectfully requests MDNR remove all inferences to manure or litter as a “waste”. The word “waste” suggests that a material no longer has a beneficial use and has a legal meaning under the Resource Conservation and Recovery Act (RCRA) which could cause confusion. Manure and/or litter have a beneficial use as a fertilizer and soil conditioner and therefore should not be considered or defined as a “waste” material.

RESPONSE: No changes were made as a result of this comment. The department must use the term “waste” in order to be consistent with terms used in other state and federal CAFO regulation. The use of the term “waste” in the proposed rule is not intended, nor should it be construed, to suggest that the manure material no longer has a beneficial use or that it has any significance as it relates to the Resource Conservation and Recovery Act (RCRA).

COMMENT #44: Tyson – Like the term “waste,” “disposal” is also a term of art under RCRA and should not be used when describing the management of manure and/or litter. Tyson recommends that all uses of “disposal” to describe the management of manure and /or litter. Tyson recommends that all uses of “disposal” to describe the management of manure and/or litter be deleted and the word “utilization” be inserted.

RESPONSE: No changes were made as a result of this comment. The word “disposal” is used only once in the context of manure management.

COMMENT #45: Tyson – The word “facility” has an industrial or factory connotation. This proposed amendment is for a farm. The vast majority of farms in the Missouri are family owned and operated. These family farms are not industrial sites or factories. Tyson requests that the word “facility” be removed from the permit and the word “farm” inserted because that is a more accurate description of the proposed regulated community.

RESPONSE: No changes were made as a result of this comment. The department has strived, as practicable, to minimize the use of the term “facility” in the proposed rule. The department acknowledges that the majority of animal feeding operations in Missouri are family owned and operated. The use of the term “facility” in the proposed rule is used as a generic term.

COMMENT #46: Tyson – Throughout the proposed amendment language regarding “proposed to discharge” exists. For instance on page 2, there is a definition for “discharge or propose to discharge”. On March 15, 2011 the 5th Circuit Court of Appeals in *National Pork Producers, et al v. EPA* ruled, “*In summary we conclude that the EPA cannot impose a duty to apply for a permit on a CAFO that “proposes to discharge” or any CAFO before there is an actual discharge. However, it is within the EPA’s province, as contemplated by the CWA, to impose a duty to apply on CAFOs that are discharging*”.

RESPONSE AND EXPLANATION OF CHANGE: The department concurs with this comment and has amended the proposed rule by removing the phrase “propose to discharge”.

COMMENT #47: Tyson – Section (3)(D)2., requires “visual inspection s at the land application area.” It is unclear whether MDNR expects that these inspections be documented. Therefore, Tyson recommends that the word “documented” be inserted prior to “visual” in the text emphasized above.

RESPONSE: No changes were made as a result of this comment. The proposed rule does not require written documentation of this visual inspection.

COMMENT #48: Tyson – Maintaining a strong bio-security policy is instrumental to the sustainability of a farm. Having assurance that MDNR will follow bio-security policies is very important to farmers. Therefore, Tyson requests language be added to the amendment that MDNR will follow the permittee’s or the owner of the animal’s bio-security policy when inspecting and entering farms.

RESPONSE: No changes were made as a result of this comment. This comment is outside the scope of this rulemaking. The department recognizes the important role that bio-security protocols play in the production and long term viability of an animal feeding operation. The department has and will continue to work closely with the Missouri Department of Agriculture in ensuring that department policy and protocols are in place and appropriate.

COMMENT #49: Shafer, Kline & Warren – We applaud the Missouri Department of Natural Resources (department) for clarifying 10 CSR 20-6.300(3)(B)2. This clarification will end the misinterpretation that department staff has used to limit the expansion of Sharpe and other pre-rule CAFOs with neighbors nearby. With that said, we are strongly opposed to the proposed change to 10 CSR 20-6.300(3)(B)2.B. The requirement that the operation must have had continuous operating permit coverage as of June 25, 1996 places unfair restrictions on Sharpe. Though Sharpe has been in continual existence since before this date, Sharpe had not yet received an operating permit from the Department. Furthermore, this addition is not consistent with RSMo 640.710.3, which clearly sets the condition for exemption as existence and not operating permit coverage.

RESPONSE AND EXPLANATION OF CHANGE: The department has made a change to 10 CSR 20-6.300(3)(B)2. The department concurs that 640.710.3 RSMo sets the condition for the exemption as an operation that is in existence on June 25, 1996. However, this statutory provision does not say that an existing operation can stop operating as an AFO for a period of time and begin operating at a later time and still maintain the exemption.

COMMENT #50: The Missouri Climate Center recommends deleting the following criteria: 1-in-10 year return rainfall frequency over a 120-day period and using supplemental criteria currently being developed in the document titled “NOAA Atlas 14, Precipitation Frequency of the United States”. Specifically, the following criteria would apply toward a chronic weather event: 1-in-10 year return rainfall frequency over 10, 90, 180, and 365-day periods. The suggested amended statement for Chapter 6, item 6, page 109, would read as follows: *The chronic weather event will be based upon evaluation of the one-in-ten (1-in-10) year return rainfall frequency over a ten (10)-day, ninety (90)-day, one hundred eighty (180)-day, and three hundred sixty-five (365)-day operating period. It is preferred the University of Missouri’s Missouri Climate Center will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in the state.* The best way to ensure rapid identification of precipitation events anywhere in Missouri that exceed these design storm criteria will require developing an automated reporting system. We look forward to assistance from MDNR to accomplish this task.

RESPONSE: No changes were made as a result of this comment. The department appreciates the technical assistance the Missouri Climate Center has provided the department in the past and we look forward to future collaboration on these issues in the future. The department understands time frames on event determinations may vary.

COMMENT #51: Missouri Cattlemen’s Association (MCA) is unopposed to the rule as proposed to the extent it maintains the status quo for operation size determinations for beef operations and does not impose additional permitting burdens on the industry above and beyond mandatory federal regulations. MCA would urge the department to always exercise the discretion granted within the proposed rule with an eye towards finding the least onerous and burdensome regulatory solution for livestock producers under the law, and with a pragmatic emphasis on minimizing expense for farmers and ranchers across the state. MCA also

would like to emphasize its opposition to the department making CAFO designation decisions under the provisions of subsection (2)(D) based solely upon the location of an animal feeding operation in a critical watershed.

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

COMMENT #52: Missouri Pork Association and Missouri Agribusiness Association (MPA/Mo-Ag) – The term “chronic weather event” is defined in subsection (1)(B)6. There is an introductory statement which explains that precipitation events and conditions “preclude” land application and dewatering practices and properly maintain wastewater storage structures. Chronic Storm events may not necessarily “preclude” all land application during a period of chronic wet weather, but rather such events inhibit or severely restrict land application opportunities.

RESPONSE AND EXPLANATION OF CHANGE: The department has removed this first sentence from the definition. This sentence is more appropriately stated later in the rule under section (4)(A)5.

COMMENT #53: MPA/Mo-Ag – Class I and Class II operations are defined in subsection (1)(B)7. The department proposes that “all animal units within an individual animal species are summed together”. My clients oppose this change to the regulations which is not consistent with EPA’s regulation.

RESPONSE AND EXPLANATION OF CHANGE: The department has changed this definition. The first sentence now reads: “ An AFO or CAFO’s class size is based on the operating level in animal units of an individual animal type at one (1) operating location.”

COMMENT #54: MPA/Mo-Ag – Subsection (2)(F)2 states that AFOs that did not previously have a construction permit must include in their permit application “documents required within the CAFO manure storage design rule.” These operations are grandfathered and not required to submit all information required by the manure storage design regulation. This information may be impossible or difficult to assemble considering the operations have been grandfathered and may have been built years ago when there were no regulations. However, there may be some level of information that would be reasonable to provide such as volume of the lagoon. The department should not require this information or should clarify exactly what information is needed and why.

RESPONSE: No changes were made as a result of this general comment. The department has determined that the level of documentation required in 8.300 is appropriate to effectively provide the necessary level of regulatory review.

COMMENT #55: MPA/Mo-Ag – In subsection (2)(F), the introductory paragraph refers to “general” NPDES and state no-discharge operating permits. We question whether there should be a limitation referring to “general” operating permits. Should this be removed? My client requests that any CAFO permit regardless of whether it is a general permit or site-specific permit should be issued concurrently with the construction permit.

RESPONSE: No changes were made as a result of this general comment. 10 CSR 20-6 already contains specific procedures for the issuance of site-specific permits which is outside the scope of this rulemaking. The department has proposed changes to the application and issuance process for a general CAFO permit in order to conform to the 2008 EPA CAFO rule.

COMMENT #56: MPA/Mo-Ag – In subsection (2)(F)2, the regulation requires the CAFO to pay a construction permit fee even when a construction permit is not issued. Permittees should not have to pay fees for permits they do not receive.

RESPONSE AND EXPLANATION OF CHANGE: The department has removed this sentence from the rule. The addition of permit fees language in this proposed rule was determined to be outside the scope of this rulemaking.

COMMENT #57: MPA/Mo-Ag – Proposed subsection (3)(B)1 inserts the words “feedlot pen” and modifies the term “waste holding basin.” My clients recommend the department follow the language in Section 640.710 which does not include feedlot pens, but rather only confinement buildings and lagoons. This comment relating to “feedlot pen” also pertains to subsection (2)(C)2.C.

RESPONSE AND EXPLANATION OF CHANGE: The department has removed the term “feedlot pen” to ensure consistency with 640.710 RSMo. The department has also revised the term “waste holding structure” to “wastewater storage structure” to more accurately conform to the term “lagoon” which is used in 640.710 RSMo.

COMMENT #58: MPA/Mo-Ag – Proposed changes to the neighbor notice requirement in Section (3)C require the CAFO to provide “signature confirmation” that all parties listed in the neighbor notice section receive the neighbor notice. This “signature confirmation” requirement is not in H.B. 1207. My clients suggest that they need only provide the department with a certification that they mailed a copy of the neighbor notice letter to all required recipients at their address listed with the county assessor’s office. It is not uncommon for landowners to be out of state for extended periods or to refuse to accept certified mail. In these circumstances, the “signature confirmation” cannot be provided to the department. In the past, this has caused significant delays without providing any corresponding environmental benefit. This same comment applies to subsection (2)(C)3.

RESPONSE AND EXPLANATION OF CHANGE: In order to maintain consistency with 640.715 RSMo, the department has removed the signature confirmation requirement in Section (3)(C)1., however, the department has not revised section (3)(C)3. as this sentence does appropriately conform to the above referenced statute.

COMMENT #59: MPA/Mo-Ag – Proposed subsection (G)2.D discusses a requirement that nutrient management plans include conditions that ensure manure applications are conducted in a manner that “prevents” surface runoff of process wastewater beyond the edge of the field. Such practices are not designed to minimize the opportunities for surface water runoff after stormwater events.

RESPONSE: No changes were made as a result of this general comment. This sentence pertains only to the “application” of manure to a field, not to stormwater runoff.

COMMENT #60: MPA/Mo-Ag – There is a reference in subsection (4)(A)2 to effluent limitations for subsurface waters. This subsection should be deleted because subsurface effluent limits are not applicable to CAFOs. The regulation in 10 CSR 20-6.300 and 8.300 are the effluent limitations applicable to CAFOs.

RESPONSE: No changes were made as a result of this general comment. Effluent limitations for subsurface waters do apply to CAFOs. Instead of unnecessarily duplicating 10 CSR 20-7.015(7) into this proposed rule, the department has chosen to simply reference this requirement.

COMMENT #61: MPA/Mo-Ag – Subsection (4)(B) relates to state no-discharge permits. This section provides that a state no-discharge permit “will provide” a CAFO a no-discharge certification. We suggest the sentence be clarified to state that the state permit “serves as” or “constitutes” a no-discharge certification.

RESPONSE AND EXPLANATION OF CHANGE: The department has replaced the phrase “will provide” with “will serve as”.

COMMENT #62: Public Hearing - At the public hearing a request was made to better align the CAFO specific neighbor notice provisions (found at 640.710 RSMo) with the department’s public comment period for construction and operating permits. The commenter stated that if they were aligned directly, there would be less confusion on the public and it would work better.

RESPONSE: No changes were made as a result of this comment. The department acknowledges that, at times, there is confusion between these two very separate and very different public comment periods. The neighbor notice provision is unique to CAFOs only and was established in the 1996 House Bill 1207 (i.e. the Hog Bill). This provision requires “the applicant”, not the department, to notify certain neighbors within a specified distance from the operation at the time the application is submitted to the department for review. The department’s public comment process is quite different in that the department places the draft permit, not the application, on public notice. In most CAFO permit issuance instances however, there will not be a department public comment period on the general permit. Only site-specific permits and future NPDES CAFO general permits will include the department public comment period. With this in mind, the department has not made any changes to this process.

COMMENT #63: Public Hearing – At the public hearing a comment was made to suggest the department no longer require Class IA CAFOs to maintain a site-specific permit. The commenter requested that they, like the other classified CAFOs, be allowed to receive coverage under the CAFO general permit.

RESPONSE: No changes were made as a result of this comment. The rule, in no way, prohibits Class IA from receiving coverage under a general permit. The department acknowledges that historically Class IA CAFOs were not allowed coverage under the CAFO general permit. Through continued refinement of our CAFO general permit the department will allow general permit coverage for Class IA CAFOs when appropriate.

COMMENT #64: Public Hearing – At the public hearing a comment was made about CAFOs that may also have a smaller side lot of beef cattle or some other animal in smaller quantities in addition to the main animal feeding operation. An example is a five thousand (5,000) head swine feeding operation that is clearly a Class IC CAFO that also has fifty (50) head of cattle in an open lot nearby on the same farm. The commenter requests that the smaller animal lot that is of different species than the larger animal feeding operation on site not be required to be included in the CAFO permit.

RESPONSE: No changes were made as a result of this comment. The EPA CAFO regulations clearly state that once an animal feeding operation becomes a regulated CAFO that all animals in confinement, regardless of species, are regulated as part of one (1) CAFO operating location. Because of this, the department is unable to make the requested change. Please note, however, that the department has and will continue to diligently work with CAFO operators to ensure that this type of issue does not become an unmanageable regulatory burden on the farming community. The department has always, and will continue to take a practical and reasonable approach with farmers when working through circumstances such as this.

10 CSR 20-6.300 Concentrated Animal Feeding Operations

(1)(B)6. Chronic weather event - The chronic weather event will be based upon an evaluation of the one-in-ten (1-in-10) year return rainfall frequency over a ten (10)-day, ninety (90)-day, one hundred eighty (180)-day, and three hundred sixty-five (365)-day operating period. It is preferred the University of Missouri's Missouri Climate Center will determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in the state;

(1)(B)7. Class I and Class II operation - An AFO or CAFO's class size is based on the operating level in animal units of an individual animal type at one (1) operating location. 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:

(1)(B)10. Discharge - A CAFO is said to discharge when it is designed, constructed, operated, or maintained such that a discharge of process waste to surface waters of the state will occur. This does not include CAFOs that merely have the potential to discharge to waters of the state. A CAFO that discharges could include one that continuously discharges process wastewater to surface waters of the state, as well as one that may only have an intermittent and sporadic discharge. Discharges of agricultural stormwater is a non-point source and therefore not included within this definition;

(1)(B)19. Process wastewater - Water which carries or contains manure, including manure commingled with litter, compost, or other animal production waste materials used in the operation of the CAFO. Also includes water directly 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;

(2)(B)2. NPDES permit—Owners or operators of Class I CAFOs that discharge must obtain a state NPDES operating permit before any discharge occurs. Class I CAFOs that do not discharge may also apply for coverage under an NPDES permit.

(2)(F)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.

(3)(B)1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal confinement building or wastewater storage 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(C) of this section or thirty (30) days prior to construction permit application, whichever is later. Buffer distances shall be –

(3)(B)2.B. The CAFO has been under continuous operation since that time; and

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

(3)(C)2.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 wastewater storage structure to the adjoining property line.

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

(4)(B) Additional Limitations for State No-Discharge Permits at Class I CAFOs. A state no-discharge permit will serve as a CAFO "No-Discharge Certification" in accordance with 40 CFR 122.23(i).

(4)(B) 1. There shall be no-discharge of manure, litter, or process wastewater into surface waters of the state from the production area.

(4)(B) 2. If at any time a CAFO's waste management system is found to be discharging, the department may revoke the CAFO's no-discharge permit and require the CAFO to seek coverage under a NPDES permit.

(4)(B)4.A. The department determines that the specific cause has been appropriately corrected so that the CAFO does not discharge; and

**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. The commission is amending sections (3) and (5), subsections (1)(A) and (5)(C) and (E), and paragraphs (1)(B)1.-26.; deleting sections (2) and (8) and subsections (4)(A)-(F); and adding a new section (2) and subsections (4)(A)-(C).

PURPOSE: This amendment 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.

(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;

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

[3.]2. 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 [or slaughter animal], cow/calf pair, veal calf, or dairy heifer; 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 [layer pullets] laying hens without a wet handling system; 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;]

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

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 forty-five (45) days or more in any twelve (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-

ty-four (24)-hour storm event as defined by the most recent publication of the National Weather Service Climate Atlas;

6. Chronic [storm] weather event—[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;] 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 one-in-ten (1-in-10) year return rainfall frequency over a ten (10)-day, one hundred twenty (120)-day, and three hundred sixty-five (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;

7. Class I and Class II operation—[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:] An AFO or CAFO's class size is based on the operating level in animal units at one (1) 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:

/ 1 Animal Unit =

1.0	Beef feeder or slaughter animal	2.5	Swine weighing over 55 lbs.	30	Chicken laying hens
0.5	Horse	10	Swine weighing less than 55 lbs.	60	Chicken layer pullets
0.7	Dairy cow	10	Sheep	55	Turkeys
				100	Broiler chickens

Animal Class Category

	Class IA 7,000 AUs*	Class IB 3,000 to 6,999 AUs	Class IC 1,000 to 2,999 AUs	Class II 300 to 999 AUs
Beef feeder or slaughter animal	7,000	3,000 to 6,999	1,000 to 2,999	300 to 999
Horse	3,500	1,500 to 3,499	500 to 1,499	150 to 499
Dairy cow	4,900	2,100 to 4,899	700 to 2,099	200 to 699
Swine weighing over 55 lbs.	17,500	7,500 to 17,499	2,500 to 7,499	750 to 2,499
Swine weighing under 55 lbs.	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Sheep	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Chicken laying hens	210,000	90,000 to 209,999	30,000 to 89,999	9,000 to 29,999
Chicken layer pullets	420,000	180,000 to 419,999	60,000 to 179,999	18,000 to 59,999
Turkeys	385,000	165,000 to 384,999	55,000 to 164,999	16,500 to 54,999
Broiler Chickens	700,000	300,000 to 699,999	100,000 to 299,999	30,000 to 99,999

* Animal Units (AUs) /

1 Animal Unit =

1	Beef cows, feeder cattle, veal calves and cow/calf pairs	10	Sheep, lambs, meat & dairy goats
0.5	Horses	30	Chicken laying hens & broilers with a wet handling system
0.7	Mature dairy cows	55	Turkeys in growout phase
2.5	Swine weighing over 55 pounds	82	Chicken laying hens without a wet handling system
10	Swine weighing less than 55 pounds	125	Chicken broilers and pullets, and turkey poult in brood phase, all without a wet handling system

Animal Class Category

	Class IA 7,000 AUs*	Class IB 3,000 to 6,999 AUs	Class IC 1,000 to 2,999 AUs	Class II 300 to 999 AUs
Beef cows, feeder cattle, veal calves and cow/calf pairs	7,000	3,000 to 6,999	1,000 to 2,999	300 to 999
Horses	3,500	1,500 to 3,499	500 to 1,499	150 to 499
Mature dairy cows	4,900	2,100 to 4,899	700 to 2,099	200 to 699
Swine weighing over 55 lbs.	17,500	7,500 to 17,499	2,500 to 7,499	750 to 2,499
Swine weighing under 55 lbs.	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Sheep, lambs, meat and dairy goats	70,000	30,000 to 69,999	10,000 to 29,999	3,000 to 9,999
Chicken laying hens and broilers with a wet handling system	210,000	90,000 to 209,999	30,000 to 89,999	9,000 to 29,999
Chicken laying hens without a wet handling system	574,000	246,000 to 573,999	82,000 to 245,999	24,600 to 81,999
Turkeys in growout phase	385,000	165,000 to 384,999	55,000 to 164,999	16,500 to 54,999
Chicken broilers and pullets, and turkey poult in brood phase, all without a wet handling system	875,000	375,000 to 874,999	125,000 to 374,999	37,500 to 124,999

* Animal Units (AUs)

[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;]

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 (1) 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;

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. 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;]

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;

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;]

[16.]14. 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;

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;

[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;]

[18.]16. 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;]

[20.]17. Operating location—[All] For purposes of determining CAFO classification, an operating location includes 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 (2) 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;

[21.]18. 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;

[22.]19. Process wastewater—[Water directly or indirectly] Water which carries or contains manure, including manure commingled with litter, compost, or other animal waste materials. Also includes water directly 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; [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;] and water resulting from the washing, or spray cooling of confined animals;

[23.]20. Production area—[That part of an operation that] The non-vegetated portions of an operation where 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, [silage bunkers, and bedding materials] pads, and bunkers. 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;

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

[25.]22. 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;

[26.]23. Wet handling system—Wet handling system is the handling of [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] process wastewater that contains more than seventy five percent (75%) moisture content or has free draining liquids. A wet handling system [also] includes, but is not limited to, lagoons, pits, tanks, all gravity out-fall 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) regulations 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 (1) or more of the following permits listed below unless otherwise exempted under subsection (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 an 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, without any later amendments or additions, 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 (1) of the above three (3) 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 section 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), and 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 time frame 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 (1) 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; or

B. For an operation seeking coverage under the NPDES permit the department will post for fifteen (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 fifteen (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 (1) 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, incorporated by reference, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954.

3. 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 twelve (12)-month average method will be used. The rolling twelve (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 and may be subject to other appropriate conditions or limitations.

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 [containment] confinement building, feedlot pen, or waste holding [basin] 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)](C) 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/s are/ and any future modification or expansion of a CAFO is exempt from buffer distance requirements, *[if they]* but not neighbor notice requirements, 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 to 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, *[all]* for a new or expanding 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; and

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

[G./F.] 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, feedlot pen, or waste holding *[basin]* structure 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; and

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

[2./3.] 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. *[Records]* A once per week record 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; and

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; and
- J. Date(s) of manure application equipment inspection.

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

1. NPDES [p/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; and
- 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 paragraph[s] (3)(G)2. [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.] 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.

[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 [technical standards for nutrient management established] Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS) approved by the Clean Water Commission[. Such technical standards for nutrient management shall—] on March 4, 2009, in accordance with 40 CFR 123.36, as published by the Missouri Department of Natural Resources, Division of Environmental Quality, Water Protection Program, PO Box 176, Jefferson City, MO 65102-0176, which is hereby incorporated by reference into this rule without any later amendments or additions, or an alternative but equally protective standard subsequently approved by the department that includes, but is not 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 [director.] department;

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; and

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. This 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 [animal waste wet handling facility and holding basins] wet handling system. 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 [from a flush or wet handling system that cross the property line of the facility, or enter the waters of the state,] with a wet handling system that also utilizes a flush system, 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 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.]

3. Class IA concentrated animal feeding operation with a wet handling system which also utilizes a flush system shall receive at least one (1) 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.

(4) Design Standards and Effluent Limitations.

(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 IA 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 IA 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.]

(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, without any later amendments or additions, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, which are hereby incorporated by reference.

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 subsection (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 time frame, when a chronic weather event is occurring for any given county in Missouri. The Missouri Climate Center's determination will be based upon an evaluation of the one-in-ten (1-in-10) year return rainfall frequency over a ten (10)-day, one hundred twenty (120)-day, and three hundred sixty-five (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 CAFOs 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 (2) 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 (2) discharges at a given site for the same cause in any five (5)-year period.

5. If a CAFO has two (2) 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.

(5) Nutrient Management Plans—[*Nutrient management plans must, to the extent applicable—*] In accordance with paragraph (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 the criteria in subsections (G), (H) and (I) below. The plan must, at a minimum, address the following areas:

(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 [*on-site*] within animal production facilities 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.

[(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 issu-

ing 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. Amended: Filed July 14, 2011.

PUBLIC COST: This proposed amendment will cost the Missouri Department of Natural Resources sixty thousand twenty-three dollars (\$60,023) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$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, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to darrick.steen@dnr.mo.gov. Public comments must be received by November 16, 2011. The Missouri Clean Water Commission will hold a public hearing at 9:00 a.m., November 2, 2011 at the Lewis and Clark State Office Building, Nightingale Creek Conference Room, 1 East, 1101 Riverside Drive, Jefferson City, Missouri.

**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

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

	Required Hours for each Classification	FTEs Per Permit	No. of Permit (70*20%)	Annual Salary	FY 2012 (4 Months)	FY 2013	FY 2014	FY 2015	FY 2016
EE III - .0010 FTE for engineering review	1	0.0005	14	\$ 62,952	\$141	\$424	\$436	\$450	\$463
ES III - .0010 FTE for program review	18	0.0087	14	\$ 46,248	\$1,868	\$5,603	\$5,771	\$5,944	\$6,123
SOSA - .0019 FTE for Admin. Support	1	0.0005	14	\$ 27,564	\$62	\$186	\$191	\$197	\$203
PS TOTAL	20	0.0096			\$2,071	\$6,212	\$6,399	\$6,591	\$6,788
FRINGE - 53.09%					\$1,099	\$3,298	\$3,397	\$3,499	\$3,604
EE					\$155	\$167	\$171	\$176	\$181
PS + Fringe + EE TOTAL					\$3,325	\$9,678	\$9,967	\$10,266	\$10,574
Indirect - 30.85%					\$1,026	\$2,986	\$3,075	\$3,167	\$3,262
TOTAL					\$4,351	\$12,663	\$13,042	\$13,433	\$13,836

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

New NPDES CAFO General Permits Expected
Additional Time Required to Review

Required Hours for each Classification	FTEs Per Permit	No. of Permits (240*20%)	Annual Salary	FY 2012 (4 Months)	FY 2013	FY 2014	FY 2015	FY 2016
EE II - .0010 FTE for engineering review	0.0010	48	\$ 55,548	\$855	\$2,564	\$2,641	\$2,720	\$2,801
EE III - .0010 FTE for program review	0.0005	48	\$ 62,952	\$484	\$1,453	\$1,496	\$1,541	\$1,587
ES III - .0212 FTE for plan review	0.0125	48	\$ 46,248	\$9,250	\$27,749	\$28,581	\$29,439	\$30,322
SOSA - .0019 FTE for Admin. Support	0.0014	48	\$ 27,564	\$636	\$1,908	\$1,966	\$2,024	\$2,085
FTE PS TOTAL	0.0154			\$11,225	\$33,674	\$34,684	\$35,724	\$36,796
FRINGE - 53.09%				\$5,959	\$17,877	\$18,414	\$18,966	\$19,535
EE				\$99	\$106	\$108	\$111	\$115
Personal Service Cost + Fringe + EE TOTAL				\$17,283	\$51,657	\$53,205	\$54,802	\$56,446
Indirect - 30.85%				\$5,332	\$15,936	\$16,414	\$16,906	\$17,413
Indirect with TOTAL				\$22,614	\$67,593	\$69,619	\$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 Program Review = 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 Program Review = 26 hours per application = 26 / 2080 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:

Hours	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
INCREASE:	\$22,614	\$67,593	\$69,619	\$71,708	\$73,859
DECREASE:	\$4,351	\$12,663	\$13,042	\$13,433	\$13,836
NET DIFFERENCE:	\$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.

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.

MISSOURI COALITION FOR THE ENVIRONMENT

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November 16, 2011

Mr. Derrick Steen
cc: Melissa Bagley, John Madras
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65 102-01 76

Mr. Steen,

Attached you will find two sets of comments that have been drafted to provide a perspective during this rulemaking process that is not explicitly or implicitly funded by any agency or corporation with a financial stake in the operation of CAFOs in Missouri. These two attached comment documents were developed in collaboration with a professional environmental consultant who was hired specifically to address the modifications to Missouri's CAFO regulations proposed for 10 CSR 20 - 6.300 and 10 CSR 20 - 8.300. These letters address the strawman rules that were available in September of 2010. Please respond thoroughly to these comments for the benefit of our membership and the public that we represent.

Additionally I am providing the following commentary on CAFO regulation in Missouri:

We propose that instead of the 500 year(.2%), 100 year(1%), or 25 year(25%) floodplain, the alluvial soils map is used to determine flood potential. Unlike the floodplains as delineated by the FIRM's this delineation does not take into account levees, which should not be used to justify exempting CAFOs from this improved regulation. Since levees breach on a regular basis across our state during flood years, and since flood years seem to be getting more and more frequent, it seems only prudent to require that any manure storage be protected to at least the 100-year level, regardless of whether or not it is behind a levee. This will greatly reduce the risk that the damages caused by a levee breach will be compounded by flooded and failing manure storage structures. The alluvial soils map largely coincides with the 100-year flood level, represents areas that have been historically inundated (hence the alluvium), and is available statewide, unlike the DFIRM maps, which are only available for a portion of the counties in Missouri.

We propose that all operations in the alluvial plane should at least be required to meet the 100 year flood level and that all operations be modified or rebuilt to meet the new, common sense, stormwater requirements for uncovered lagoons, by the time of their next permit

renewal. All CAFOs located in the floodplains should have protections to 500 year levels since they store such incredibly toxic sludge that has the potential to spread disease during flood periods when people are at a higher risk for exposure to polluted surface waters. 150 out of 19095 permitted CAFOs are located in the Alluvial plane, which is more or less synonymous with the 100 year floodplain in Missouri. The 150 operations supposedly account for 88651 animal units according to NPDES shapefiles acquired from DNR earlier this year. It is very important that these operations be retro-fitted to meet 100-year protections as soon as possible, regardless of whether they are expanding their operation. The fact remains that they are a significant public health hazard in terms of spreading anti-biotic resistant bacteria and other pathogens to human populations, especially during flood conditions.

No rulemaking regarding CAFOs should move forward until the public has been provided with accurate information on CAFOs in Missouri. It is impossible to make informed comments without information. Unfortunately, the only publicly available GIS file on AFOs is inaccurate in terms of recording the functional capacity in animal units for all permitted CAFO operations in Missouri. The publicly available dataset on CAFOs has been modified to reflect operations that may have been shut down over violations, lawsuits, etc. but could very well be producing meat and polluting our waters despite the fact that this information has not been made accurately and fully available to the public. For example, of the 150 operations found to be in the alluvial plane, 101 operations show 0 in the column of PF_TOTALAU, despite the fact that these are in fact some of the largest operations in the state of Missouri. Without accurate information we cannot fully participate the public notice process and this file should be kept updated on a monthly basis and available to the public at all times. It is highly likely that many of the 101 operations that report zero animal units are currently in operation, but the data does not reflect this and has apparently not been updated in almost a year. It is impossible for the public to participate in this process without accurate information on the impacts purportedly being mitigated.

The proposed improvements should apply to all operations large enough to have to build a waste lagoon, regardless of the reported total animal units, which may be misreported or kept just below the 1000 AU threshold to avoid permit requirements.

This rule should be applied to all manure storage facilities, lagoons, etc. regardless of the reported number of animal units. Isn't the value of cleaning up Missouri's water from concentrated waste storage operations worth more than \$25,000/yr? According to this RIR the rule has been crafted to provide "the least costly and intrusive methods, while still providing increased consistency, efficiency, and environmental protection in the regulation of CAFOs." This seems to mean that we have chosen the cheapest possible method for protecting against the impacts of CAFOs, not the best method, the cheapest. The fiscal note for this comes to a whopping \$24,050/yr. This rule does not address the operations currently responsible for water quality and quality of life issues across our state that are not planning on expanding, apparently assuming that these operations do not pose a significant threat to the environment. The proposed improvements should apply to all operations large enough to have to build a waste lagoon, regardless of the reported total animal units, which may be misreported or kept just below the 1000 AU threshold to avoid permit requirements.

Nor does this rule address operations that are purposefully operating just below the 1000 animal unit threshold to avoid these common sense rules and other protections that come through an NPDES permitting process. Despite the fact that a hog operation with 2400 finishing hogs produces an amount of fecal waste equivalent to that produced by a city of 24,000 humans, this operation would be able to get by without a permit thanks to our inadequate and imbalanced regulation of these operations. So while public citizens are paying a lot to maintain water quality their investments in waste treatment are being undermined by these operations that take on very little responsibility for the waste they are managing. While, by the most recent data available, it appears that there are 1095 permitted CAFOs in Missouri, the NRCS reports that there were 108,000 operations raising some kind of livestock in Missouri. Surely many of these are small farms, but many are operations that have been designed to skirt the regulations and these should be weeded out and required to get permits. Through our extensive work on CAFO issues in Missouri we have found many instances where facilities have purposefully mis-reported their AU totals, this should be ameliorated by requiring they submit a bill of sale or receipt accounting for every rotation of animals being confined and fed in their operation. This should be a requirement. All operations should be required to have a state operating permit if for no other reason than to allow for a tally of animals by location to be kept for all prudent water quality and environmental quality data to be assessed when making decisions.

The department should explain why these operations can't be required to meet the same consistent standards as a new operation would be held to, despite the fact that they are just as risky and dangerous to public health and new or expanded operations. One of the major reasons to get an NPDES permit is to use technology and improved methods to eliminate pollution in our waters, the permit renewal process is designed to allow for operations to be brought into compliance with current regulations. This is the regulatory process prescribed by the Clean Water Act, and although Federal Regulations may not always make sense, this process is perfectly reasonable and is necessary for us to gradually bring the extensive water pollution in Missouri under control and to give nature a chance to coincide with our social and economic goals.

We appreciate your thorough and expeditious response to our comments, please address any deficiencies in the rule that have been brought up in our comments. Please let me know if you have any questions regarding our comments.

Thank you,



Lorin Crandall
Clean Water Program Director
Missouri Coalition for the Environment

Comments and discussion – “Manure Storage Design Regulations (10 CSR 20 - 6.300)”
[09/22/2010 ‘strawman’ version] – v 1.0 - 12/01/2010

The comments provided herein will address the current rule version and the proposed amendments.

Def (1)(B)(5) This definition of a ‘chronic weather event’ is vague as it is not clear what ‘...the 1 in 10 year return rainfall frequency over a 10-day, 120 day, and 365 day operating period...’ is. It is not clear whether 1 in 10 means the maximum event, or perhaps average event. This definition should be improved by indicating how a ‘chronic weather event’ is determined and its declaration is observed. This criticism also holds for condition (4)(A)(5).

Def (1)(B)(10) The definition of ‘discharge or propose to discharge’ contains an exception:

“Discharges of agricultural stormwater are a non-point source and therefore not included within this definition.”

This exception is too expansive and unlawful because it could be interpreted as applying to land application discharges in stormwater from fields where the application rate exceeded a rate that would ensure appropriate agricultural utilization or when the CAFO operator has not complied with BMPs during land application operations, or when the nutrient management plan used by the CAFO operator did not comply with the nutrient technical standards. Because the Missouri rules do not define precisely what is meant by “agricultural stormwater,” further uncertainty about land application discharges is introduced. Any such exception for allowable or unregulated discharge should itself be qualified by the CWA legislative exception language. The agricultural stormwater exception should be amended to apply only when manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in section 122.42(e)(1)(vi) through (ix). Without this qualifier, the proposed Missouri discharge definition does not comport with the federal law requirements for agricultural stormwater exceptions from discharge.

Def (1)(B)(11) MDNR is altering ‘dry litter’ to be ‘dry process waste.’ However,

in making the changed definition, MDNR removed the final phrase of the dry litter definition... "...and is not exposed to precipitation or storm water runoff during storage." Dry waste cannot be sustainable as dry if it is allowed to be exposed to precipitation. The problem with MDNR making a change like this is that it is sometimes unpredictable what the consequence will be elsewhere in the MDNR regulations. Outdoor management, transfer and storage of solid CAFO waste will also a problematic matter and create potential for discharge when large areas are exposed to precipitation which must then be stored for treatment and land application. The fundamental concern is that MDNR may transfer certain types of wastes, discharges or conduct to be outside of CWA-originated regulatory jurisdiction, or authorize operator conduct that constitutes less than the required best management practice technology-based effluent limitations.

Man-made convey. MDNR is proposing to delete the present (1)(B)(14) definition of '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."

If my recall is correct there is federal CWA case law on the matter of 'man made conveyances.' I don't presently know how this deletion would affect application of that case law. However, the present CAFO rule does not have a specific definition of what the word 'discharge' means. The MDNR striking of the definition of the 'man made conveyances' might potentially be interpreted by regulatory parties to mean that a discharge of aqueous CAFO waste and/or process wastewater must be proven to reach 'waters of the U.S.' even when an agricultural ditch or other conveyances is the pathway to 'waters of the U.S.' The striking amendment also erases the concept of 'improper land application' that runs off. If an operator discharged to an agricultural ditch as a 'man made conveyance,' that operator might be tempted to deny there was a discharge to waters of the U.S. if the aqueous discharge did not actually achieve flowage to a blue line stream as shown on a topo map (i.e. dry ditch condition for extended distance to blue line stream).

No discharge

Provisions at (1)(B)(15) describe 'no discharge operation' and here

again MDNR proposes an unqualified and thus over-broad exemption for agricultural stormwater. In order to be Ag stormwater, a CAFO owner/operation must have land-applied CAFO waste nutrients in compliance with a nutrient management plan that ensures appropriate agricultural utilization of applied nutrients. MDNR's exemption again is too broad.

Waste (1)(B)(19) MDNR is proposing the strike the final sentence in EPA's definition of process wastewater in a manner that deregulates silage leachate and other aqueous wastes. This is objectionable. See my prior memorandum for a discussion of this issue.

Production area The (1)(B)(20) definition of 'production area' contains a qualifier saying that the "non-vegetated portions" of an operation....where CAFO waste activities are carried out.... such a qualifier is improper because it means the presence of vegetation in a portion of a production area operation would then not be a portion of the production area under MDNR's qualified definition.

Veg Buffer Provisions at (1)(B)(22) defining 'vegetated buffer'... saying they are a 'narrow' strip of vegetation is too vague to consider this definition to be a part of a best management practice.

(2)(B) The problem with the way this permit coverage rule is written is that it does not capture/cover requirements for permit amendments associated with CAFO NMP changes associated with new land application fields, fields newly requiring phosphorus-based planning or fields which must no longer receive applications of CAFO waste because of excessive soil test phosphorus. Only alternations to production area physical elements seem to be covered. Such failure to consider land application-related permit modification changes can be view as undermining the Second Circuit Waterkeeper decision requirements and EPA's subsequent year 2008 rulemaking.

(2)(D)(2) The 'in addition' clause in the second part of Section (2)(D)(2) has the effect of improperly restricting the authority of MDNR to require smaller AFO production area facilities that discharge, or that have land application discharges, from being required to get discharge permits.

(2)(E)(1) Because 'small scale pilot projects' and 'demonstration projects for beneficial use' are not defined and are not known as to their consequences for discharge, exemptions for these should not be allowed until there is further clarification of the impact of the

section.

(2)(E)(2) A comma is missing after the first phrase, 'dry process waste.'

(3)(A)(4) 'eight' should actually be 'eighty'

(3)(A)(5) The proposed rule says an 'engineering certification of the completed system shall be submitted prior to operating permit coverage," but there are no requirements provided for what the engineering certification must address. The rule should specify exactly what elements are required for such an engineering certification and one such requirement should be a statement by the engineer on whether the facility as constructed comports with the plans and specifications that were submitted for any construction permit application, and that the register professional engineer states whether he has personal knowledge to support any such statements.

This provision is written in a bizarre manner that reflects the tendency throughout to fail to identify who makes the decision and who specifically is bound by such a decision. Saying that "All construction permit applications shall require engineering documents..." is awkward. Instead, the rule should indicate what elements are required to be present in applications submitted by the proposed CAFO owner/operator.

(3)(A)(6) This provision states:

"The department will not examine the adequacy of efficiency of the structural or mechanical components of the waste management systems. The issuance of permits do not include approval of such features."

Any practical inquiry into whether a CAFO owner/operator will comply with MDNR's rule is inextricably intertwined with the need to examine the structural or mechanical components of the CAFO waste management system. This seems to be a uniquely MDNR approach at abdicating its clean water regulatory authority over CAFO production area physical elements in a manner contrary to the purposes of the CWA.

(3)(A)(8) The clause, "unless specifically designed to handle them" should be struck in order to make the ban on disposal in wastewater systems enforceable. The only exception would be for an exterior composting operation whose physical features are inextricably intertwined with a leachate/runoff collection system.

(3)(B)(5) Adding this provision makes the preceding buffer requirements virtually meaningless. This paragraph contains no standards for decisionmaking and no provides no notice to the public or CAFO facility neighbors who would be affected by such a decision. Because there are no standards for decisionmaking, MDNR decisions under this section may be arbitrary and capricious. The procedure for allowing less than required buffers contains no public participation or notice to the public.

(3)(C) This section outlines notice and partial decisionmaking requirements for construction permit applications. MDNR envisions a required notice only to adjacent property owners, MDNR and a county board, and this notice would be sent by the CAFO applicant. The notice would provide for a 30 day comment period for MDNR to receive comments on the permit application. The 30 day period would begin on the day that the CAFO applicant submittal was received by MDNR. However, there would be no notice to the public of the actual date when MDNR received the application, so the public would not have a notice with a deadline date for the comment period.

There is no indication of any public comment or public notice being proposed for a draft construction permit or other notice.

(3)(D) There is no requirement that land application equipment be subject to annual spreading rate calibration requirements. The weekly inspection requirement for process wastewater impoundments should be altered to ensure that facilities operating impoundments near their operating capacity or with little or no freeboard cannot use the weekly inspection frequency as a defense for failure to document overflow/discharge or operations of the lagoon in contradiction to CAFO owner/operator duties.

The weekly inspection requirement for production area wastewater storage must also be amended to include physical inspections and the presence of any discharges, the physical condition of the impoundment, and maintenance of requirements prohibiting vegetative or animal intrusion to vegetated lagoon embankments.

There is no requirement to install and operate a rain gage and to collect and record valid daily precipitation data.

There is no requirement stated to conduct soil test every three years for fields receiving CAFO waste.

Nothing in this rule provision provides requirements to conduct

inspections and monitoring shown for all such elements indicated in the Missouri CAFO Nutrient Management Technical Standard. For example, no requirement can be located that requires that field soil test information be made available in a permit application that contains an NMP. There is no requirement for a CAFO permittee to monitor and record the date, weather conditions, identify of applied waste, actual application rate in tons/gallons per acre and total applied each day. This constitutes a serious deficiency in the proposed draft rules.

Nothing here requires the CAFO owner/operator to inspect and monitor land spreading field tile water discharges to ensure that animal waste and process wastewater spread in fields is not discharged through field tile. MDNR has no technical standards that reflect BAT/BPT to control process wastewater intrusion into agricultural fields tiles. Experience in the midwest suggest that limiting field application rates to no more than 6000 gallons per acre will prevent most field tile discharge problems along with ensuring that waste applications are not made during times when field tiles are discharging water.

(3)(E)(2)

The land application record-keeping here does not require record-keeping and reporting the amount waste applied to each field for each day of field application in tons per acre and gallons per acre and in total tons and gallons applied to each field for each day of application. There is no requirement to operate a rain gage and collect and record the data. The requirement to record weather conditions is not specific as to the weather factors to be noted. Weather and field condition tracking should address daily precipitation, high and low temperature, whether fields planned for imminent operational spreading are frozen, snow-covered or saturated.

(3)(F)

This annual report provision does not require the owner/operator to certify compliance of the facility with its nutrient management plan and permit, and to require reporting of discharges to surface waters from land application.

No individual spreading field-specific information is provided in the annual report. Nothing provided in the annual report addresses whether the facility has complied with the NMP and with all required best management practices on a field by field basis.

With the very limited required elements in the annual report, there is no way to verify or determine whether the owner/operator has

complied with their nutrient management plan, whether they exceeded application rates in the plan in actual practice, etc.

Deleted Authority Review of the provisions cited for deletion in the amendatory version on p 6 of 19 is a more acceptable version of text defining agricultural storm water dischargers. The deleted language recognizes that such stormwater is exempt from discharges when the operator has complies with nutrient management practices that ensure appropriate agricultural utilization.

More deleted provisions are shown on p 7 of 19. These specific provisions were previous qualifiers limiting the reach of the exemption provisions to allow MDNR to address a variety of realistic noncompliance scenarios associated with adverse CAFO design and operations. These were important qualified limitations on the reach of the exemptions and such language should be restored to the present proposal.

(3)(G)(2) The first sentence strikes the words ‘application rates for’ thus rendering the rest of the sentence awkward and odd. This provision intrinsically attacks the requirement that there be no discharge from land application operations. A nutrient management technical standard that only calls for application rates whose effect is only to minimize and not prevent discharges to surface waters beyond application field boundaries does not provide sufficient effluent control to comply with the federal CWA requirement for effluent limitations reflecting BAT/BPT.

The provision attempts to make a nutrient management technical standards established by the Clean Water Commission be incorporated by reference, but such reference must be to a specific enactment and citation by the Clean Water Commission. No such identification of any specific document is provided in the text of the rule. As we previously noted in prior comments, MDNR has not subjected the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard adopted on March 4, 2009 to formal Missouri administrative rule adoption processes.

The Missouri Nutrient Management Technical Standard (MO NMTS) itself contains a statement:

“NOTE: An operation may choose to use alternative protocols other than those established in this standard, however, it must be able to demonstrate that such alternative protocols provide both a reliable and technically valid basis for achieving the

nutrient management objectives.”

The effect of this statement is to render the protocols and procedures of the MO NMTC to be nothing less than a non-enforceable, non-rule document. All effluent limitations for CAFOs must be enforceable and verifiable, but this cannot be the case for the primary ‘standards’ document affecting site-specific nutrient management plan development and implementation in the state.

(3)(G)(2)(A) MDNR is deleting the requirement to have a field specific assessment of the potential for nitrogen transport to surface waters. No field or soil-specific assessment is apparently done to assess the potential of applied wastes on groundwater. Elevated nitrate concentrations in groundwater will be the result of failure to address such issues in nutrient management plans.

(3)(G)(2)(B) The terms, ‘fields that do not have a high potential for phosphorus runoff to surface water’ and ‘phased implementation of phosphorus-based nutrient management’ are not defined in the rule and these concepts are subject to varying interpretation. More clarity is necessary to properly determine the meaning of these two terms.

While ‘multi-year phosphorus application’ is defined at (1)(B)(14), the commentor questions whether MDNR’s rules and practices actually ensure that operators do not actually apply waste in years subsequent to the ‘multi-year’ application and that nutrient management plans recognize the zero waste application subsequent years.

(3)(G)(2) Editing of the existing rule without due care appears to have placed the A-E subprovisions that were formerly considered to be mandatory elements of a CAFO’s required submission of an NMP and made these subprovisions modify the authority of the Clean Water Commission in adopting its nutrient management technical standards. This change does not make any sense, since it is apparent the real purpose of the A-E provisions is to get CAFO-site-specific elements of the facility’s site-specific Nutrient Management Plan established and these are not intended as written to be criteria for the Clean Water Commission decision on the Missouri Nutrient Management Technical Standard.

deleted authority On p. 12-13 of 19, considerable current regulatory text with several specific requirements is shown as being deleted. It is not clear that all of these authorities have been included elsewhere in the proposed

text.

(4)(A)(1) We see here in this provision that Missouri will not require pre-existing CAFO operations to have their waste management facilities be subject to a requirement to demonstrate compliance with any design/operational standards provided in the proposed new 8.300 design standard rules. Note that this first subsection does not impose any effluent limitations that involve waste storage facility operation.

(4)(A)(2) “Effluent limits for subsurface waters shall be in accordance with 10 CSR 20-7.015(7).” This latter regulation features a provision at 10 CSR 20-7.015(7)(E) saying that a subsurface water quality standard rule did not apply for facilities designed and constructed to meet unspecified MDNR criteria “...provided these designs have been reviewed and approved by the department.” Note that review and approval of the design and construction of waste lagoon facilities is not only not required, but the draft 8.300 rules explicitly say the department “...will not examine the adequacy or efficiency of the structural or mechanical components of the waste management systems.” [(3)(A)]

Note that consideration of whether the 10 CSR 20-7.015(7)(E) exemption from groundwater quality review under 10 CSR 20-7.015(7)(A) depends exclusively on a two simultaneous conditions.... the first is that the department design criteria exists and second that the department has actually reviewed the designs of the facility in question. It is not clear from the rules how this site-specific second condition is verified in facilities holding general permits.

MDNR allows groundwater nitrate up to the 10 mg/l limit which is widely considered to be a public health hazard at that aqueous concentration when used for drinking water. There is no groundwater criteria for ammonia or pathogens in the Missouri rule in Table A of the 10 CSR 20-7.031 Water Quality Standards. When the current groundwater condition is such that nitrate concentrations approach or exceed 10 mg/l, there is no limitation on a CAFO groundwater discharger making such problems worse. Note that the rule can potentially be interpreted to create a duty for site subsurface water monitoring.

Note also, there is nothing in MDNR regulations which would prevent a CAFO owner/operator from walking away from ammonia/nitrate polluted groundwater beneath waste storage lagoons that are, or will be, taken out of service. Ammonia contained in

CAFO waste will eventually be oxidized to nitrates after seepage from lagoons or from land application. Natural attenuation will also be at work, but there is no information or worst case hydrogeological analysis from MDNR justifying why such waste storage lagoon seepage must be considered benevolent and without consequence to other/neighboring uses and users of the groundwater. [The new 8.300 regulation did not have any basis shown that would examine worst case groundwater contamination and transport regimes associated with operating and abandoned waste lagoon operations.]

It might be helpful to verify whether MDNR ever regulated any CAFO owner/operator under the 10 CSR 20-7.015(7) regulation. The regulation at 10 CSR 20-7.015(7)(F) is not the strongest regulation here, but it nevertheless creates some accountability features which should be placed in permits.

(4)(A)(4) This provision is an adverse and potentially destructive paraphrase of the Clean Water Act agricultural stormwater exception. However any statement here without explicit mention that the CAFO must show appropriate agricultural utilization of the nutrients in the waste allows latitude around the federal agricultural stormwater definition. It would be better to reference the federal exception text than to have MDNR produce this paraphrasing:

(4)(A)(5) This subsection addresses chronic [wet] weather events. See also discussion under (1)(B)(5) which applies to this section as well.

The draft contemplates declarations of a ‘chronic weather event’ by the U of M Missouri Climate Center which would trigger implementation of the MDNR “Wet Weather Management Practices for CAFOs.” This one page practice sheet addresses lagoons about to overflow, gives allowances for spreading on frozen or saturated ground, and other measures. This practice document is not being subjected to rulemaking, even as it is portrayed as a *de facto* best management practice during chronic weather events. Without explanation, the document states that land application to frozen or saturated soils is preferable to allowing a lagoon to overflow [this must necessarily be considered on a site-specific basis for a valid review.]. Spreading waste liquids on frozen or saturated soils is supposed to be a non-BMP practice, but the wet weather policy embraces such a practice, and carrying out such practices creates a high probability of discharge from land application operations.

Finally, the wet weather policy envisions land spreading on non-NMP, non-permitted fields. CAFOs should not be allowed to

spread on new fields not in the present NMP without permit amendment, public notice and comment.

- (4)(A)(6) This entire section contemplates wastewater management activities “...occurring outside of the production area systems that are not associated with land application [that] shall be identified in the CAFO’s Nutrient Management Plan.” However, the waste management activities that MDNR is attempting to consider separately from the production area must, by EPA’s definition, be considered part of the production area and subject to regulation as a production areas. MDNR cannot segregate one part of a production area at a CAFO from another part, and then say that one must comply with production area requirements and the other complies with different requirements. MDNR’s approach violates EPA’s CAFO permit program rules.
- (4)(B)(1) This provision prohibits discharge into waters of the state from the production area. However, ‘waters of the state’ includes subsurface waters in aquifers under 10 CSR 20-7.015(1)(A)(6). Waste lagoons, feedlots and other CAFO production area facilities will all discharge to groundwater through liner and soils seepage. As a result, this provision must be revised to create internal consistency with 10 CSR 20-7.015(1)(A)(6).
- (4)(B)(2) It would be improper for MDNR not to require a source to obtain an NPDES permit in such a situation as posed by the rule.
- (4)(B)(3) The draft rule to requires a regulated party to give “....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.” However, writing the remedy required in this manner specifically precludes an appropriate response in situations in which it is either physically and/or institutionally impossible to “ensure” such a condition does not arise again.
- (4)(B)(4-6) These sections are all objectionable because they are attempts to insulate state ‘no-discharge’ permit CAFOs from NPDES permit requirements and violation findings for failure once a discharge has occurred [and MDNR’s draft even countenances multiple discharges without considering that each such discharge is a violation. Getting certification under 40 CFR 122.24(j) as a no discharge facility and then having a discharge is still a violation of CWA section 301(a) for unpermitted (no NPDES permit) discharge by a point source. MDNR should not create a compliance ‘out’ for multiple discharges

and the agency must not give itself discretion to excuse CAFO point sources with discharges from the NPDES permit requirement. State CWA program elements in 40 CFR 122.24(j) were never intended to authorize as allowable the kind of CAFO multi-discharge conduct that MDNR is contemplating in the draft rules. State permit CAFOs that discharge should be required to apply for an NPDES permit within 30 days of any such discharge event.

- (4)(C) This section states that effluent limitations for Class II and smaller AFOs will be determined by Best Professional Judgement. However, this rule does not explain how such site-specific determinations would be addressed for general permits or whether general permits would be viable.

- (5) In the federal rule, these NMP requirements are explicitly tied to the definition and declaration of BAT and BPT in the federal rules, but MDNR did not show that relationship. The site Nutrient Management Plan should be considered an effluent limitation along with all of the other BMPs contained in the NMP. The CAFO owner or operator must be accountable for achieving the level of performance shown in the criteria for what NMPs must achieve.

- (6) Nothing is included here requires the CAFO owner/operator to conduct an assessment of groundwater contamination during closure activities for waste lagoons and to remedy any problems found.

Gen permits & NMP Although MDNR staff claim their rules are intended to comply with EPA's year 2008 rulemaking, nothing in the MDNR documents really addresses EPA's post-Second Circuit Waterkeeper decision requirements for public participation at all. Under the court decision and EPA's rulemaking, terms of the NMP would be included in permits, the public would be afforded the opportunity to comment on NMPs and new procedures for certificates of coverage under general permits would into play that would provide some level of public notice and participation for certificates of coverage. None of this appears in the MDNR proposal and the failure to do so constitutes a *de facto* nullification of an important previous environmental victory as it affects MO. Failure of a state to carry out public participation requirements for this effluent source category is a serious matter that should be raised quickly with U.S. EPA water staff in Region 7.

November 16, 2011

Darrick Steen, P.E.
MDNR, Director's Office
P.O. Box 176
Jefferson City, MO 65102-0176

RE: Proposed Amendment to 10 CSR 20-6.300

Dear Mr. Steen:

On behalf of Sharpe Land & Cattle (Sharpe), MO-0119962, we would like to offer the following comments to the proposed changes to the Concentrated Animal Feeding Operations (CAFO) regulations.

We applaud the Missouri Department of Natural Resources (Department) for clarifying 10 CSR 20-6.300(3)(B)2. This clarification will end the misinterpretation that Department staff has used to limit the expansion of Sharpe and other pre-rule CAFOs with neighbors nearby. With that said, we are strongly opposed to the proposed change to 10 CSR 20-6.300(3)(B)2.B. The requirement that the operation must have had continuous operating permit coverage as of June 25, 1996 places unfair restrictions on Sharpe. Though Sharpe has been in continual existence since before this date, Sharpe had not yet received an operating permit from the Department. Furthermore, this addition is not consistent with RSMo 640.710.3, which clearly sets the condition for exemption as existence and not operating permit coverage.

Thank you for your considerations of our comments. If you have questions about these comments or wish to discuss further, please contact me by phone at 573-234-2609 or by e-mail at: bli@skw-inc.com.

Sincerely,



Barbara Li, P.E.
SHAFFER, KLINE & WARREN, INC

Cc: Sharpe Land & Cattle

SKW 201280-010

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Mr. Darrick Steen
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Comments on Proposed Changes to 10 CSR 20-6.300 and 10 CSR 20-8.300

Dear Mr. Steen:

I am submitting the following comments on behalf of my clients the Missouri Pork Association and Missouri Agribusiness Association (Mo-Ag). Members of my client associations operate concentrated animal feeding operations here in Missouri. These comments, which reduce to writing comments that have previously been made orally to the department, relate to 10 CSR 20-6.300 and 10 CSR 20-8.300 published in the August 15, 2011 issue of the *Missouri Register*.

Page 1909

Comment No. 1. The term "chronic weather event" is defined in subsection (1)(B)6. There is an introductory statement which explains that precipitation events and conditions "preclude" land application and dewatering practices and properly maintain wastewater storage structures. Chronic storm events may not necessarily "preclude" all land application during a period of chronic wet weather, but rather such events inhibit or severely restrict land application opportunities.

Comment No. 2. Class I and Class II operations are defined in subsection (1)(B)7. The department proposes that "all animal units within an individual animal species are summed together." My clients oppose this change to the regulations which is not consistent with EPA's regulation.

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Comment No. 3. Subsection (2)(F)2 states that AFOs that did not previously have a construction permit must include in their permit application "documents required within the CAFO manure storage design rule." These operations are grandfathered and not required to submit all information required by the manure storage design regulation. This information may be impossible or difficult to assemble considering the operations have been grandfathered and may have been built years ago when there were no regulations. However, there may be some level of information that would be reasonable to provide such as volume of the lagoon. The

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WATER PROTECTION PROGRAM

Letter was received on Nov 16, but was inadvertently stamped on Nov 17. - Darrick Steen

department should not require this information or should clarify exactly what information is needed and why.

Comment No. 4. In subsection (2)(F), the introductory paragraph refers to “general” NPDES and state no-discharge operating permits. We question whether there should be a limitation referring to “general” operating permits. Should this be removed? My client requests that any CAFO permit regardless of whether it is a general permit or site-specific permit should be issued concurrently with the construction permit.

Comment No. 5. In subsection (2)(F)2, the regulation requires the CAFO to pay a construction permit fee even when a construction permit is not issued. Permittees should not have to pay fees for permits they do not receive.

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Comment No. 6. Proposed subsection (3)(B)1 inserts the words “feedlot pen” and modifies the term “waste holding basin.” My clients recommend the department follow the language in Section 640.710 which does not include feedlot pens, but rather only confinement buildings and lagoons. This comment relating to “feedlot pen” also pertains to subsection (2)(C)2.C.

Page 1916

Comment No. 7. Proposed changes to the neighbor notice requirement in Section (3)C require the CAFO to provide “signature confirmation” that all parties listed in the neighbor notice section receive the neighbor notice. This “signature confirmation” requirement is not in H.B. 1207. My clients suggest that they need only provide the department with a certification that they mailed a copy of the neighbor notice letter to all required recipients at their address listed with the county assessor’s office. It is not uncommon for landowners to be out of state for extended periods or to refuse to accept certified mail. In these circumstances, the “signature confirmation” cannot be provided to the department. In the past, this has caused significant delays without providing any corresponding environmental benefit. This same comment applies to subsection (2)(C)3.

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Comment No. 8. Proposed subsection (G)2.D discusses a requirement that nutrient management plans include conditions that ensure manure applications are conducted in a manner that “prevents” surface runoff of process wastewater beyond the edge of the field. Such practices are not designed to minimize the opportunities for surface water runoff after stormwater events.

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Comment No. 9. There is a reference in subsection (4)(A)2 to effluent limitations for subsurface waters. This subsection should be deleted because subsurface effluent limits are not applicable to CAFOs. The regulations in 10 CSR 20-6.300 and 8.300 are the effluent limitations applicable to CAFOs.

Comment No. 10. Subsection (4)(B) relates to state no-discharge permits. This section provides that a state no-discharge permit "will provide" a CAFO a no-discharge certification. We suggest the sentence be clarified to state that the state permit "serves as" or "constitutes" a no-discharge certification.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By: 
Robert J. Brundage

RJB:lab

Enclosures

cc: Don Nikodim (w/encl.)
Steve Taylor (w/encl.)
Jeff Windett (w/encl.)
Jo Ann Manhart (w/encl.)
John Bryan (w/encl.)
Dave Drennen (w/encl.)



Missouri Cattlemen's Association

Serving Missouri's Cattle Industry Since 1911

November 16, 2011

VIA ELECTRONIC MAIL

Mr. Darrick Steen
Missouri Department of Natural Resources
Division of Environmental Quality, Water Protection Program
PO Box 176
Jefferson City, MO 65102

Re: Comments from Missouri Cattlemen's Association re: proposed changes to CAFO rules

Dear Mr. Steen,

This letter is sent to offer comment from the Missouri Cattlemen's Association on your Division's proposed amendments to 10-CSR 20-6.300, which incorporates federal CAFO permitting rules and sets out state rules for CAFO permitting in Missouri.

The Missouri Cattlemen's Association ("MCA") is the largest and oldest trade association representing cattle producers in Missouri. Founded in 1911, MCA represents a very diverse beef industry that strives to meet demand in emerging markets and increase demand for beef. MCA appreciates the opportunity to comment on the proposed amendments to Missouri's CAFO permitting rules.

MCA is generally neutral to the Department's proposed rule. MCA believes many federally required environmental regulations for CAFOs are onerous and overly burdensome, and MCA has opposed and will continue to oppose some of the regulations incorporated in the EPA's 2009 rules for NPDES permitting.

However, MCA also recognizes that the Department is required to implement those rules or risk forfeiting permitting and inspection responsibilities back to the EPA. MCA has long supported the maintenance of CAFO permitting and inspection authority at the state level, and is opposed to surrendering those duties to federal agencies.

MCA is therefore unopposed to the rule as proposed to the extent it maintains the status quo for operation size determinations for beef operations and does not impose additional permitting burdens on the industry above and beyond mandatory federal regulations.



Missouri Cattlemen's Association

Serving Missouri's Cattle Industry Since 1911

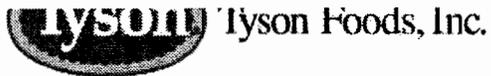
However, MCA would urge the Department to always exercise the discretion granted within the proposed rule with an eye towards finding the least onerous and burdensome regulatory solution for livestock producers under the law, and with a pragmatic emphasis on minimizing expense for farmers and ranchers across the state.

MCA also would like to emphasize its opposition to the Department making CAFO designation decisions under the provisions of subsection (2)(D) based solely upon the location of an animal feeding operation in a critical watershed.

MCA looks forward to a continuing relationship with the Department that can assure positive environmental outcomes while also preserving and protecting Missouri's critical beef industry. We would urge the Department to contact us if they have future questions or concerns regarding Missouri beef production.

Sincerely,

Brent E. Haden
Regulatory Counsel
Missouri Cattlemen's Association



November 15, 2011

Mr. Darrick Steen
MDNR
PO Box 176
Jefferson City, MO 65102

RE: Comments on MDNR's Proposed Amendment to 10CSR 20-6.300

The following comments are submitted on behalf of Tyson Foods, Inc., and subsidiaries Cobb Vantress, Inc., and The Pork Group, Inc. (collectively "Tyson"), regarding the Missouri Department of Natural Resources' (MDNR) proposed amendment to 10 CSR 20-6.300.

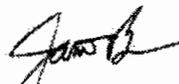
1. Tyson respectfully requests MDNR remove all inferences to manure or litter as a "waste." The word "waste" suggests that a material no longer has a beneficial use and has a legal meaning under the Resource Conservation and Recovery Act (RCRA) which could cause confusion. Manure and / or litter have a beneficial use as a fertilizer and soil conditioner and therefore should not be considered or defined as a "waste" material.
2. Like the term "waste", "disposal" is also a term of art under RCRA and should not be used when describing the management of manure and / or litter. Tyson recommends that all uses of "disposal" to describe the management of manure and / or litter be deleted and the word "utilization" be inserted.
3. The word "facility" has an industrial or factory connotation. This proposed amendment is for a farm. The vast majority of farms in Missouri are family owned and operated. These family farms are not industrial sites or factories. Tyson requests that the word "facility" be removed from the permit and the word "farm" inserted because that is a more accurate description of the proposed regulated community.
4. Throughout the proposed amendment language regarding "propose to discharge" exists. For instance on page 2, there is a definition for "Discharge or Propose to Discharge". On March 15, 2011, the 5th Circuit Court of Appeals in *National Pork Producers, et al v. EPA* ruled,

"In summary, we conclude that the EPA cannot impose a duty to apply for a permit on a CAFO that "proposes to discharge" or any CAFO before there is an actual discharge. However, it is within the EPA's province, as contemplated by the CWA, to impose a duty to apply on CAFOs that are discharging."
[emphasis added]

5. Section (3)(D)2., requires "visual inspections at the land application area." It is unclear whether MDNR expects that these inspections be documented. Therefore, Tyson recommends that the word 'documented' be inserted prior to 'visual' in the text emphasized above.
6. Maintaining a strong bio-security policy is instrumental to the sustainability of a farm. Having assurance that MDNR will follow bio-security policies is very important to farmers. Therefore, Tyson requests language be added to the amendment that MDNR will follow the permittee's or the owner of the animal's bio-security policy when inspecting and entering farms.

Tyson appreciates the opportunity to provide comments on the proposed rule. If you have any questions please feel free to contact me at 479-290-7189.

Sincerely,



Jamie Burr
Live Production EHS Manager