

Missouri Clean Water Commission Meeting
Department of Natural Resources
East Elm Street Conference Center
1730 East Elm Street
Jefferson City, Missouri

October 18, 2018

**Proposed Amendments of Order of Rulemaking
10 CSR 20-6 Permits**

Issue: The Department has finalized its recommendation on the proposed 10 CSR 20-6, Permits. The proposed changes to this chapter include amendments to seven existing rules. The Department is requesting the Commission adopt the following orders of rulemaking.

10 CSR 20-6.011 - Fees

10 CSR 20-6.015 - No Discharge Permits

10 CSR 20-6.020 - Public Participation, Hearing and Notice to Governmental Agencies

10 CSR 20-6.070 - Groundwater Heat Pump Operating Permits

10 CSR 20-6.090 - Class III Mineral Resources Injection/Production Well Operating Permits

10 CSR 20-6.200 - Stormwater Regulations

10 CSR 20-6.300 - Concentrated Animal Feeding Operations

Background: Under Executive Order 17-03, all state agencies are working to reduce Red Tape in Missouri. Red tape refers to regulations or other government rules or processes that unnecessarily burden individuals and businesses while doing little to protect or improve public health, safety, and our natural resources. The Department has determined that changes to 10 CSR 20-6, Permits, are necessary after public notice, hearing, and comment.

The proposed changes to 10 CSR 20-6 Permits were published in the July 16, 2018, *Missouri Register*. The public comment period for the proposed rulemaking was from July 16 to August 23, 2018. A public hearing was held for the proposed rules on August 15, 2018, and changes were made to the appropriate proposed rules as a result of comments received during the public comment period.

As a result of comments received, the following substantive changes have been made:

In 10 CSR 20-6.070, Groundwater Heat Pump Operating Permits, the word “will” was replaced with shall.”

In 10 CSR 20-6.090, Class III Mineral Resources Injection/Production Well Operating Permits, the word “consider” was replaced with “shall be considered.” Additionally, the phrase “is defined as” was replaced with “shall be.” The phrase “and shall be calculated”

was added back to the rule. The rule was also changed by replacing the word “will” with the word “shall” in six locations. The phrase “and shall” was added to ensure that a specific portion of the rule was understood to be a requirement. Finally, the rule was changed to add “the applicant shall” to clarify that it is the applicant’s responsibility to conduct the required action.

In 10 CSR 20-6.200, Storm Water Regulations, the phrase “from the department” was added to ensure clarity on who grants the waiver. The phrase “as defined in section 644.016, RSMo,” was added as a reference to the statute regarding the definition of waters of the state.

In 10 CSR 20-6.300, Concentrated Animal Feeding Operations, the word “will” was replaced with “shall” to ensure that the portion of the rule is understood to be a requirement in three locations. Another portion of the rule was changed to remove the added word “should” and replaced with the word “shall” to establish that it is a requirement. Additionally, the rule was changed with the removal of the word “are” and replaced with the phrase “shall be” to clarify that this portion of the rule is a requirement. Another portion of the rule was changed by removing the phrase “are to” and replacing it with the phrase “shall” to clarify that language as a requirement. The rule was changed by removing “is to” and replacing with “shall” also establishing that language as a requirement. The rule was changed to provide clarity with “Secondary containments shall be installed in accordance with Section 640.730 RSMO, and” Inspections shall be conducted in accordance with Section 640.725, RSMo in addition to the following:” The rule was clarified to include the header, “Concentrated Animal Feeding Operating Indemnity Fund for Class IA CAFO. Additionally, the rule was changed for clarity by adding the phrase, “Participation in the Concentrated Animal Feeding Operating Indemnity Fund and its administration shall be in accordance with sections 640.740 through 640.747, RSMo.”

Recommended Action: The Department recommends the Commission adopt the Order of Rulemaking for 10 CSR 20-6 Permits.

Suggested Motion Language: The Department suggests the Commission motion to adopt the Order of Rulemaking for 10 CSR 20-6 Permits, as proposed.

List of Attachments:

- 10 CSR 20-6.011 - Fees, Order of Rulemaking
- 10 CSR 20-6.015 - No Discharge Permits, Order of Rulemaking
- 10 CSR 20-6.020 - Public Participation, Hearing and Notice to Governmental Agencies, Order of Rulemaking
- 10 CSR 20-6.070 - Groundwater Heat Pump Operating Permits, Order of Rulemaking
- 10 CSR 20-6.090 - Class III Mineral Resources Injection/Production Well Operating Permits, Order of Rulemaking
- 10 CSR 20-6.200 - Stormwater Regulations, Order of Rulemaking
- 10 CSR 20-6.300 - Concentrated Animal Feeding Operations, Order of Rulemaking

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

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under Section 644.026, RSMo. the Commission amends a rule as follows:

10 CSR 20-6.011 Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the Missouri Register July 16, 2018. 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 amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, the Administrative Rules staff explained the proposed amendment and one (1) comment was made. Three (3) comments were made through the Regulatory Action Tracking System.

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department's removal of the word "shall" in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department's proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word "shall" has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review no changes have been made.

COMMENT #2: Darrin Whitlock requested the Department change 1E to only charge seasonal permits a partial fee because his cost of doing business should not be the same as someone that runs their business year round.

RESPONSE: The Department appreciates this comment. The changes proposed in the rule amendment are administrative in nature. In order to revise the fee structure certain conditions outlined in Section 644.057, RSMo. must be met. Section 644.057, RSMo. sets forth a stakeholder process whereby the Clean Water Commission can approve a new fee structure. No changes were made as a result of this comment.

COMMENT #3: Steve McGowan commented he was unable to view Appendix A to see if he should comment or not on the rule.

RESPONSE: The Department appreciates this comment. This proposed rule amendment did not include Appendix A. This proposed rule amendment removed reference to Appendix A, which was removed during the 2014 rulemaking. No changes were made as a result of this comment.

COMMENT #4: Kevin Wideman requested the Department add a statement that says if a permit is not approved or denied within 45 days the cost of the permit will be reduced by 10 percent, if not approved or denied within 60 days a reduction of 20 percent will be applied, and so on.

RESPONSE: The Department appreciates this comment. The changes proposed in the rule amendment are administrative in nature. In order to revise the fee structure certain conditions outlined in Section 644.057, RSMo. must be met. Section 644.057, RSMo. sets forth a stakeholder process whereby the Clean Water Commission can approve a new fee structure. No changes were made as a result of this comment.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6.015 – No-Discharge Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.015 No-Discharge Permits is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2018 (43 MoReg 1632-1633). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff provided testimony on the proposed amendment. Two (2) comments were received during the public hearing from Ms. Jeanne Heuser and Mr. Robert Brundage. Two (2) written comment were received.

PUBLIC COMMENTS:

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department’s removal of the word “shall” in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction. **RESPONSE:** This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department’s proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word “shall” has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review no changes have been made.

COMMENT #2: Maisah Khan with Missouri Coalition for the Environment (MCE), Ms. Caroline Pufalt, Sierra Club Missouri Chapter, and Ms. Jeanne Heiser, citizen, had similar comments so they are being combined. All entities are concerned changes in 10 CSR 20-6.015 remove the requirement for a construction permit or any review of engineering projects. Section (2)(A) appears to remove responsibility and therefore liability for no-discharge owners and their facility design, leaving it solely to operators who may only be hired as managers. (4)(A and B)

remove references to 14 relevant rules. They oppose any changes that remove valuable institutional knowledge about the network of “No Discharge” rules that exist in the state regulatory framework. MCE is concerned that these changes may also make it more difficult for interested Missouri citizens to learn about “No Discharge” facilities, and the protections once afforded to communities from “No Discharge” facilities may be diminished. Ms. Heuser referenced #8 in the Regulatory Impact Report (RIR) which discusses short-term consequences, to support her comment. She has concerns about inefficiency and human error in overlooking rule requirements. Ms. Heuser also asked that #13 in the RIR be used as support to “not revise the rule,” as it states “inaction will have no effect on the regulated community and regulators.” Ms. Pufalt has concerns about the security of facility construction reviews and impacts on construction permits.

RESPONSE: The Department agrees that maintaining “institutional” knowledge is an important aspect of any organization or business. While the permitting requirements may change over time, permits are issued based on current regulatory requirements. Executive Order 17-03 required all state agencies to review rules for ineffective, unnecessary, or unduly burdensome requirements. Portions of this regulation that are contained in other statutes and regulations are duplicative and unnecessary, therefore, have been removed. Removal of these duplicative sections referenced in this comment does not remove the duty to comply with those requirements contained in other state statutes and regulations. No changes have been made as a result of these comments.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6.020 – Public Participation, Hearings and Notice to Governmental Agencies

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.020 Public Participation, Hearings, and Notice to Governmental Agencies is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 16, 2018 (43 MoReg 1633-1635). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff explained the proposed rescission. Two (2) individuals commented during the public hearing. The Department also received twelve (12) written comments during the public comment period.

PUBLIC COMMENTS:

COMMENT #1: Robert Brundage, Newman, Comley and Ruth, submitted a comment related to the removal of Subsection (8) which states “Appeals filed under Sections (5) and (6) of this rule may contain a request for stay of the conditions appealed.” Mr. Brudage asks that should this portion of the rule be removed, that there would be opportunity for a permittee to seek a stay of an appealed permit.

RESPONSE: The proposed amendment specifies that appeals shall conform to the requirements of the administrative hearing commission 1 CSR 15-3.350. Subsection (2)(B) of this rule states that complaints may include a motion for stay. As a result, the Department believes that a permittee still has the capability to seek a stay of an appealed permit. No changes were made to the rule as a result of this comment.

COMMENT #2: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department’s removal of the word “shall” in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department’s proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice,

although the word “shall” has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review no changes have been made.

COMMENT #3: Ms. Jeanne Heuser, a resident from rural Moniteau County, commented during the public hearing on August 15, 2018 and expressed her concern for the reduction in public participation, specifically in reference to the removal of 10 CSR 20-6.020(1)(A)4. Ms. Heuser also submitted written comments to the same; thus, both the comment received during public hearing and the written comment stated that the current rule requires the public notice of renewed general permits for facilities that were found to be in significant non-compliance during the last permit cycle. The comment suggested that, in general, public participation in environmental processes should be increased rather than decreased.

RESPONSE: The Department agrees that public participation is a fundamental and integral part of environmental protection. Should non-compliance be significant enough that a general permit does not provide adequate protection to either human health or the environment, state regulations allow the department to require specific entities to apply for a site-specific permit to further address non-compliance. Site-specific permits are required to undergo a public comment period for initial issuance and subsequent renewals. No changes were made to the rule as a result of this comment.

COMMENT #4: Ms. Kathleen Dolson, Ms. Dana Gray, and Ms. Francine Glass, citizens, expressed their concern that changes in the rule, specifically the deletion of the sentence “Applications, draft permits, supporting documents and reports upon those documents shall be available to the public, except for those portions determined to be confidential,” will weaken the public’s ability to access information.

RESPONSE: The Department does not believe that the removal of this sentence reduces the public’s access to information. The deleted language is restrictive in the sense that it specifies the types of documents that are available to the public. The proposed language removes the specificity and instead states that any information or records may be subject to public disclosure. The new language updates the rule to incorporate the requirements of Missouri Sunshine Law. No changes were made to the rule as a result of this comment.

COMMENT #5: Ms. Laurie Lakebrink and Ms. Arlene Sandler, citizens, stated they prefer no changes be made to this rule.

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. 10 CSR 20-6.020 has not been amended recently and there have been several statutory changes regarding appeals of permit conditions, abatement orders, permit denials and variances since the last amendment that needed to be incorporated into the rule for consistency. The Department further believes that changes to the rule provide clarity and uniformity while streamlining administrative processes for permitting. No changes were made to the rule as a result of this comment.

COMMENT #6: Joyce Wright, citizen, stated “Don't change 10 CSR 20-6.020.”

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. 10 CSR 20-6.020 has not been amended recently and there have been several statutory changes regarding appeals of permit conditions, abatement orders, permit denials and variances since the last amendment that needed to be incorporated into the rule for consistency. The Department further believes that changes to the rule provide clarity and uniformity while streamlining administrative processes for permitting. No changes were made to the rule as a result of this comment.

COMMENT #7: C. Wulff, citizen, stated “Please do not change 10 CSR 20-6.020. Public access to information is imperative for our democracy.”

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. 10 CSR 20-6.020 has not been amended recently and there have been several statutory changes regarding appeals of permit conditions, abatement orders, permit denials and variances since the last amendment that needed to be incorporated into the rule for consistency. The Department further believes that changes to the rule provide clarity and uniformity while streamlining administrative processes for permitting. No changes were made to the rule as a result of this comment.

COMMENT #8: Barry Leibman, citizen, stated “Please do not change this rule.”

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. 10 CSR 20-6.020 has not been amended recently and there have been several statutory changes regarding appeals of permit conditions, abatement orders, permit denials and variances since the last amendment that needed to be incorporated into the rule for consistency. The Department further believes that changes to the rule provide clarity and uniformity while streamlining administrative processes for permitting. No changes were made to the rule as a result of this comment.

COMMENT #9: Denise Baker, citizen, stated “Don’t change 10 CSR 20-6.020.”

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. 10 CSR 20-6.020 has not been amended recently and there have been several statutory changes regarding appeals of permit conditions, abatement orders, permit denials and variances since the last amendment that needed to be incorporated into the rule for consistency. The Department further believes that changes to the rule provide clarity and uniformity while streamlining administrative processes for permitting. No changes were made to the rule as a result of this comment.

COMMENT #10: Maisah Khan, Missouri Coalition for the Environment, expressed concern that new language in paragraph (3)(A) has “the effect of reducing transparency and public access to information.” The comment further requests that the language remain as it is, or the words “may be” be replaced with “is”.

RESPONSE: The Department does not believe that the removal of this sentence reduces the transparency or public’s access to information. The deleted language is actually restrictive in the

sense that it specifies the types of documents that are available to the public. The proposed language removes the specificity and instead states that any information or records may be subject to public disclosure. The words “may be” illustrates that not all information requests submitted to the department are subject to public disclosure such as information that is determined to be confidential. The new language updates the rule to incorporate the requirements of Missouri Sunshine Law. No changes were made to the rule as a result of this comment.

COMMENT #11: Ms. Caroline Pufalt, Sierra Club Missouri Chapter, indicated that they opposed suggested changes to this section. New language should read “Any information or records submitted obtained pursuant to Chapter 644, RSMo, is subject to public disclosure pursuant to Chapter 610 RSMo.” Main verb should be “is” instead of “may be”. The limits on public disclosure (confidentiality) are included with the reference cited.

RESPONSE: The Department does not believe that the removal of this sentence reduces the transparency or public’s access to information. The deleted language is actually restrictive in the sense that it specifies the types of documents that are available to the public. The proposed language removes the specificity and instead states that any information or records may be subject to public disclosure. The words “may be” illustrates that not all information requests submitted to the department are subject to public disclosure such as information that is determined to be confidential. The new language updates the rule to incorporate the requirements of Missouri Sunshine Law. No changes were made to the rule as a result of this comment.

COMMENT # 12: Comments were received by Department staff after the comment period closed regarding subsection (2) of the rule. The rule amendment proposes the replacement of existing language with a citation to federal regulation. The proposed modification does not include language regarding the applicability of later amendments which must accompany the citation per 536.031.4, RSMo. Additionally, staff observed a grammatical error in the amended language. The phrase “conform to the stipulations outline” should be “conform to the stipulations outlined”.

RESPONSE: The Department acknowledges the omission and error of the language as proposed and appreciates the comment. Subsection (2) has been updated accordingly.

10 CSR 20-6.020 Public Participation, Hearings and Notice to Governmental Agencies

10 CSR 20-6.020(2) Notice to Other Governmental Agencies. Notices to governmental agencies shall conform to the stipulations outlined in federal regulation 40 CFR 124.59 “Conditions requested by the Corps of Engineers and other government agencies,” January 4, 1989, as published by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 which is incorporated by reference and does not include later amendments or additions.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6 - Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.070 Groundwater Heat Pump Operating Permits is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 16, 2018 (43 MoReg 1635-1637). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff explained the proposed rescission. One (1) individual commented during the public hearing.

PUBLIC COMMENTS:

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department's removal of the word "shall" in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE AND EXPLANATION OF CHANGE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department's proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word "shall" has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review the following change has been made: changing 10 CSR 20-6.070(2)(E) by removing the word "will" and replacing with "shall."

10 CSR 20-6.070 Groundwater Heat Pump Operating Permits

10 CSR 20-6.070(2)(E) If an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and processing of the application may be discontinued until the applicant has corrected all deficiencies.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6 - Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.090 Class III Mineral Resources Injection/Production Well Operating Permits is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the Missouri Register on July 16, 2018 (43 MoReg 1637-1642). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff explained the proposed rescission. One (1) individual commented during the public hearing.

PUBLIC COMMENTS:

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department's removal of the word "shall" in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE AND EXPLANATION OF CHANGE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department's proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word "shall" has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review the following changes have been made:

10 CSR 20-6.090(2)(A)10 was changed by removing the previously added word "consider" and replacing with the initial phrase "shall be considered."

10 CSR 20-6.090(2)(A)11 was changed by removing the previously added phrase "is defined as" and replaced it with the initial phrase "shall be."

10 CSR 20-6.090(2)(A)11.A was changed by placing back the initial phrase "and shall be calculated."

10 CSR 20-6.090(2)(A)11.D. was changed by removing the previously added word “will” and replacing with the initial word “shall.”

10 CSR 20-6.090(2)(A)13. was changed by removing the previously added word “will” in two locations, and replacing with the initial word “shall” for both locations.

10 CSR 20-6.090(2)(A)14. was changed by removing the previously added word “will” and replacing with the initial word “shall.”

10 CSR 20-6.090(2)(E) was changed by removing the previously added word “will” and replacing with the initial word “shall.”

10 CSR 20-6.090(2)(H) was changed by removing the previously added word “will” and replacing with the initial word “shall.”

10 CSR 20-6.090(8)(D) was changed by removing the previously added word “will” and replacing with the initial word “shall.”

10 CSR 20-6.090(2)(A) was changed by adding “and shall” to ensure that it was understood to be a requirement.

10 CSR 20-6.090(2)(A)10 was change to add “the applicant shall” to clarify that it is and has been the applicants responsibility to conduct the required activity.

COMMENT #2: Department staff noted a grammatical error in Section (2)(A)11.C, and incorrect citation in Section (2)(A)20. Staff also noted an incorrect citation in Section (2)(A)29.

Department staff also noted an incorrect citation in (2)(F). Department staff noted incorrect alpha-numeric language in Section (3)(B)4. Department staff noticed incorrect reference and alpha-numeric language in Section (3)(B)5. Department staff noticed incorrect references in Section (3)(C). Staff noted incorrect references in (4)(D)1. 3. and 4. Department noted incorrect references in Section (5)(C)1.B.

RESPONSE AND EXPLANATION OF CHANGE: Section (2)(A)11.C. has been corrected as well as the incorrect citation in (2)(A)20 and (2)(A)29. The alpha-numeric error in Section (3)(B)4. has been correct. The citation in (2)(F) has been corrected. The incorrect reference and alpha-numeric error have been corrected. The reference in Section (3)(C) has been corrected. The reference (4)(D)1. 3. and 4. have been corrected. The incorrect references in (5)(C)1.B. have been corrected.

10 CSR 20-6.090 Class III Mineral Resources Injection/Production Well Operating Permits

10 CSR 20-6.090(2)(A) An application for an operating permit shall be made for each injection/production well and shall include each of the following items. The application may be supplemented with copies of information submitted for other federal or state permits.

10 CSR 20-6.090(2)(A)10. In determining the number, location, construction and frequency of sampling of the monitoring wells, the following criteria shall be considered:

10 CSR 20-6.090(2)(A)11. Map(s) describing an area of review for each Class III injection/production well or group of wells, as determined by a registered professional engineer or a qualified geologist as defined by sections 256.501 and 256.503, RSMo. The area of review shall be that area the radius of which is determined by the lateral distance from a Class III injection/production well or perimeter of a group of wells in which the pressure in the injection zone may cause the migration of injection or formation, or both, fluid into an USDW or into an improperly constructed, plugged or abandoned well or test hole.

10 CSR 20-6.090(2)(A)11.A. The radius of the area of review may be calculated using a mathematical model (for example, modified Thesis equation) and shall be calculated for an injection time period at least equal to the expected life of the well(s). The owner or operator must demonstrate to the director that the mathematical model used and the calculated area of review are appropriate for the known hydrologic properties of the underlying formations.

10 CSR 20-6.090(2)(A)11.C. If the area of review is determined by a mathematical model pursuant to subparagraph (2)(B)8.A. the permissible radius is the result of the calculation even if it is less than one-half (1/2) mile.

10 CSR 20-6.090(2)(A)11.D. Nothing in this section shall prevent the director from imposing alternate areas of review when geologic or hydrologic conditions render a calculated or fixed area a potential threat to an underground source of drinking water;

10 CSR 20-6.090(2)(A)13. A plan for plugging and abandonment. Where the plan meets the requirements of this paragraph, the director shall incorporate it into the permit as a condition. Where the director's review of an application indicates that the permittee's plan is inadequate, the director shall require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph or deny the application. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment;

10 CSR 20-6.090(2)(A)14. Prior to granting approval for the plugging and abandonment of a Class III well, the director shall consider the following information:

10 CSR 20-6.090(2)(A)20. Proposed formation testing program to obtain the information required by paragraph (2)(H)4.;

10 CSR 20-6.090(2)(A)29. Where the injection formation is not a water-bearing formation, only the information in subparagraph (2)(A)28.B. must be submitted;

10 CSR 20-6.090(2)(E) If an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and processing of the application may be discontinued until the applicant has corrected all deficiencies.

10 CSR 20-6.090(2)(F) Any person signing a document under subsection (2)(B) or (C) shall make the following certification:

10 CSR 20-6.090(2)(H) Prior to granting approval for the operation of a Class III well, the director shall consider the following information:

10 CSR 20-6.090(3)(B) The director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells—

1. Described and identified by location in permit application(s) if they are existing wells, except that the director may accept a single description of wells with substantially the same characteristics;
2. Located within the same well field, facility site, reservoir, project or similar unit in the same state;
3. Operated by a single owner or operator;
4. Area permits specify—
 - A. The area within which underground injections are authorized; and
 - B. The requirements for construction, monitoring, reporting, operation and abandonment for all wells authorized by the permit.
5. Area permits may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided—
 - A. The permittee notifies the director at a time as the permit requires;
 - B. The additional well satisfies the criteria in subsection (3)(B) and meets the requirements specified in the permit under subsection (3)(B)4; and
 - C. The cumulative effects of drilling and operation of additional injection wells are considered by the director during evaluation of the area permit application and are acceptable to the director.

(C) If the director determines that any well constructed pursuant to subsection (3)(B)5. does not satisfy any of the requirements of paragraphs (3)(B)5.A. and B., the director may modify or terminate the permit or take enforcement action. If the director determines that cumulative effects are unacceptable, the permit may be modified or terminated.

10 CSR 20-6.090(4)(D)1. Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis completed in accordance with paragraph (2)(A)19. is incorrect or incomplete, a new analysis in accordance with paragraph (2)(A)19. shall be provided to the director;

10 CSR 20-6.090(4)(D)3. Monitoring of the fluid level in the injection zone semi-monthly where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells in accordance with paragraph (4)(D)1. semi-monthly; and

10 CSR 20-6.090(4)(D)4. Quarterly monitoring of wells in accordance with paragraph (4)(E)1.

10 CSR 20-6.090(5)(C)B. The permittee has not received notice from the director of the intent to inspect or otherwise review the new injection well within thirteen (13) days of the date of the notice in paragraph (5)(C)1. of this rule, in which case prior inspection or review is waived and the permittee may commence injection.

(I) No operation shall commence until corrective actions outlined in paragraph (2)(A)12. and those required by the department have been completed.

10 CSR 20-6.090(8)(D) The director shall prescribe aquifer cleanup and monitoring where s/he deems it necessary and feasible to insure adequate protection of USDWs.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6.200 – Storm Water Permitting

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.200 Storm Water Regulations is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 16, 2018 (43 MoReg 1642-1652). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff provided testimony on the proposed amendment. One (1) individual commented during the public hearing. The Department also received two (2) written comments during the public comment period.

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department’s removal of the word “shall” in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE AND EXPLANATION OF CHANGE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department’s proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word “shall” has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review the following changes have been made:

(1)(B)11 includes the phrase “from the department” to ensure clarity on who grants the waiver.
(1)(D)16.A includes “as defined in section 644.016, RSMo” as a reference to the statute defines waters of the state.

COMMENT #2: Ms. Maisah Khan with Missouri Coalition for the Environment (MCE) stated the quality of our nation’s waters are continuing to decline from non-point source pollution, and MCE believes that municipal separate storm sewer systems (MS4) permits in Missouri should continue to be strengthened.

RESPONSE: The Department appreciates this comment and has worked to ensure that the rule amendments represent the minimum requirements needed to protect human health and

environment consistent with the authority granted by the Missouri Clean Water Law and applicable federal regulations under the National Pollution Discharge Elimination System. No changes were made as a result of this comment.

COMMENT #3: Mr. Barry Leibman, citizen, stated “please do not change this rule.”

RESPONSE: Executive Order 17-03 mandated that the Department review and update rules to remove unnecessary or overly restrictive regulatory burden and improve clarity and consistency throughout. No changes were made to the rule as a result of this comment.

COMMENT #4: Department staff recognized a reference was incorrect in Section (1)(B)13.C. Also noted was Section (1)(D)(10)(C) and (1)(D)(10)(C)(II). Also noted is Section (1)(D)10.D with an incorrect reference.

RESPONSE AND EXPLANATION OF CHANGE: The reference error in Section (1)(B)13.C. has been corrected as well as Section (1)(D)(10)(C) and (1)(D)(10)(C)(II). The reference error in Section (1)(D)10.D was resolved.

10 CSR 20-6.200 Storm Water Regulations

10 CSR 20-6.200(1)(B)11. Phase II municipal separate storm sewer systems (MS4) may request a waiver from the Department in accordance with 40 CFR part 122.32(c), December 8, 1999, as published by the Environmental Protection Agency (EPA) Docket Center, EPA West 1301 Constitution Avenue NW., Washington, DC 20004, are incorporated by reference. This rule does not incorporate any subsequent amendments or addition.

10 SR 20-6.200(1)(B)13.C. Waste load allocations are not needed on non-impaired waters to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of paragraph (1)(B)13. and subparagraph (1)(B)13.C. of this rule, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause or a potential cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Department that the construction activity will take place, and that storm water discharges will occur, within the drainage area addressed by the TMDL or by an equivalent analysis.

10 CSR 20-6.200(1)(D)10.C Owned and operated by a municipality other than those described in subparagraph (1)(D)10.A. of this rule that are designated by the director as part of a system. In making this determination, the director may consider the following factors:

- (I) Physical interconnections between the municipal separate storm sewers;
- (II) The location of discharges from the designated municipal storm sewer relative to the discharges from municipal separate storm sewer described in subparagraph (1)(D)10.A. of this rule;

10 CSR 20-6.200(1)(D)10.D. The director, upon petition, may designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdiction, watershed, or other appropriate basis that includes one (1) or more of the systems described in subparagraph (1)(D)10.A. of this rule.

10 CSR 20-6.200(1)(D)16.A. Does not include any waters of the state as defined in section 644.016, RSMo.

Title 10 – DEPARTMENT OF NATURAL RESOURCES
Division 20 – Clean Water Commission
Chapter 6 - Permits

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission of the State of Missouri under Section 644.026 and Section 536.023(3), RSMo, the Commission amends a rule as follows:

10 CSR 20-6.300 Concentrated Animal Feeding Operations is amended

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2018 (43 MoReg 1652-1655). This proposed amendment will become effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2018, and the public comment period ended August 23, 2018. At the public hearing, Department staff provided testimony on the proposed amendment. One (1) comment was received during the public hearing from Mr. Robert Brundage with Newman, Comley and Ruth. The Department received twelve (12) comment letters from individuals during the public comment period.

COMMENT #1: Mr. Robert Brundage, Newman, Comley and Ruth made a comment at the public hearing regarding the Red Tape Reduction work. He characterized the Department's removal of the word "shall" in its rules as camouflage rather than reduced burden, and requested staff make rule language less awkward if there has been more than a thirty percent reduction.

RESPONSE AND EXPLANATION OF CHANGE: This general comment relates to multiple proposed rules. Regarding process, the goal of Red Tape Reduction has been to reduce regulatory burdens. The Department's proposed changes were informed by stakeholder engagement, in some cases over multiple years, and have reduced unnecessary requirements. The effort has not centered around a single word choice, although the word "shall" has been removed when deleting duplication with statute, rescinding, reorganizing and re-writing a rule, or revising language to clarify (not camouflage) responsibilities. Staff did review this rule relative to whether intended language was used to reflect the nature of an obligation, not with a focus on a particular word as suggested by this comment. Based on this review the following changes have been made:

Subsection (3)(B), "Buffer distances shall be in accordance with Section 640.710 RSMo. unless exempted below:"

Subsection (3)(C), "Neighbor notice shall be conducted in accordance with section 640.715 RSMo."

Subsection (3)(H) ,“Secondary containments shall be installed in accordance with Section 640.730 RSMo. Inspections shall be conducted in accordance with Section 640.725 RSMo. in addition to the following:”

Subsection (4)(A)5 was changed to remove the added word of “should” and replaced with the initial word “shall.” Additionally, this subsection was changed to remove the added word “are” and replaced with the initial phrase “shall be.”

COMMENT #2: Ms. Kathy Stehwien, citizen, stated that the Department is only concerned about the rules and regulations in favor of these facilities. She noted that consideration should be given to the public who have to live around these facilities, especially with regard to how close the factories can be to a neighborhood, as well as odor issues.

RESPONSE: Section 640.710 RSMo. requires “...the department shall require at least but not more than the following buffer distances between the nearest confinement building or lagoon and any public building or occupied residence...” This statute does not allow the Department to require a larger buffer distance. Air pollution and odor regulations are administered by the Air Pollution Commission. No changes were made as a result of this comment.

Comment #3: Mr. Robert Brundage with Newman, Comley, and Ruth, commented that page 1653 subsection (3) (Mo Reg) implements the buffer distances required by section 640.710, RSMo. The introduction to this subsection has been rewritten to “Buffer distances are to be in accordance with section 640.710, RSMo.” The phrase “are to be” is confusing and poor grammar. It would be more clear to directly state “Buffer distances shall be implemented and maintained in accordance with section 640.710, RSMo.”

RESPONSE AND EXPLANATION OF CHANGE: The Department has changed 10 CSR 20-6.300(3)(B) by removing “are to” and replacing with “shall.”

COMMENT: #4: Mr. Robert Brundage with Newman, Comley, and Ruth, commented that on page 1653 subsection (3)(C) Neighbor Notice Requirements (Mo Reg), the introduction is written in a confusing manner. He suggested it should be reworded as follows: “Neighbor notice shall be provided in accordance with the requirements of section 640.715 RSMo.” Mr. Brundage also suggested in Subsection 1 that the word “Buffer” be inserted in front of “distances” and delete “are to be” to read as follows: “Buffer [d]istances shall be ~~are to be~~ measured from...”

RESPONSE AND EXPLANATION OF CHANGE : The Department has change 10 CSR 20-6.300(3)(C) by removing “is to” and replacing with “shall.” Regarding the change requested for 10 CSR 20-6.300(3)(C)1.,this language is repetitive as sections 640.710 and 640.715, RSMo, establish how neighbor notice distances are measured. Due to language being repetitive it was removed from the regulation to comply with Executive Order 17-03.

COMMENT #5: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on the discussion of Annual Reports on page 1653 (Mo Reg). Mr. Brundage stated that during stakeholder meetings his clients recommended to maintain this section in the regulation for the convenience of their members to know what the annual reporting requirements are without having to resort to the federal code that takes more time and imposes more red tape. Furthermore, the introductory section of 40 CFR 122.42(e) includes an additional requirement

not found in the current regulation concerning e-reporting. Is this requirement meant to be included and required by the year 2020?

RESPONSE: The deletion of repetitive requirements is one of the objectives of Executive Order 17-03. The Department concurs that by removing repetitive requirements that permittees will need to consult another regulation for the requirements. The annual reporting requirements are also listed in all Confined Animal Feeding Operation (CAFO) operating permits. The e-reporting requirement currently in the regulation as 40 CFR 122.42(e) is incorporated by reference into this regulation. No changes were made as a result of this comment.

COMMENT #6: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on page 1654, subsection (3)(H) Additional Requirements for Class IA CAFOs (Mo Reg). Mr. Brundage requested the introductory sentence for subsection (H) should be rewritten and inserted in subsection 1 as follows, "Class IA CAFOs shall perform inspections in accordance with requirements of section 640.725 RSMo." He also requested that subsection 1, which includes a requirement to perform an inspection of the "structural integrity" of the collection system and containment structures, be removed. He stated that this is not required by the statute and should be deleted from this subsection. To require weekly structural integrity inspections of structures that have never suffered a catastrophic failure is overly burdensome. Mr. Brundage also suggested a rewrite of language in subsection 4 as follows: "Class IA CAFOs shall construct and maintain secondary containment structures in accordance with the requirements of section 640.730 RSMO."

RESPONSE AND EXPLANATION OF CHANGE: The duty to comply with Class IA inspection requirements is contained in 640.725, RSMo. The language referenced in this comment is a citation as to the location of the requirements. The requirement of weekly inspections of the structural integrity of collection systems and containment structures is not a new requirement and is consistent with inspections required by Class IB and IC operations in 10 CSR 20-6.300(3)(D)C. As a result of one of Mr. Brundage's comments the following language has been added to subsection (3)(H): "Secondary containments shall be installed in accordance with Section 640.730 RSMo. Inspections shall be conducted in accordance with Section 640.725 RSMo. in addition to the following:"

COMMENT #7: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on page 1654 (Mo Reg), subsection (4)(A) 2., Design Standards and Effluent Limitations. He stated that Subsection 2 imposes effluent limits for subsurface waters. Since CAFOs are not allowed to discharge, it makes no sense to impose discharging effluent limits for subsurface waters. Therefore, this subsection should be deleted.

RESPONSE: CAFOs are point sources and are subject to both state operating permit and federal NPDES permits where appropriate in accordance with sections 640.710 and 644.026. As a part of being subject to NPDES regulations, effluent limitations are applicable given the allowance for discharge under certain situations; thus, CAFOs are appropriately given effluent limitations. In instances where these allowable discharges are to subsurface waters of the state effluent limitation are also applicable. No changes were made as a result of this comment.

COMMENT #8: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on page 1655 (Mo Reg), subsection (7), CAFO Indemnity Fund. The heading for subsection 7 does not make sense ("in accordance with"). Instead, the heading could be rewritten as follows:

“Concentrated Animal Feeding Operation Indemnity Fund.” Also, Subsection (A) could be rewritten as follows: “Class IA CAFO shall participate in the CAFO indemnity fund in accordance with the terms and conditions of section 640.740, RSMo.”

RESPONSE AND EXPLANATION OF CHANGE: The Department has changed 10 CSR 20-6.300(7) to only include the header “Concentrated Animal Feeding Operating Indemnity Fund for Class IA CAFO.” Additionally, because of this change the existing subsections (A) thru (D) have been bumped by one section to (B) thru (E) with the addition of a new subsection (A). The new subsection (A) now reads, “Participation in the Concentrated Animal Feeding Operating Indemnity Fund and its administration shall be in accordance with sections 640.740 through 640.747, RSMo.” Also important to note that the reference to sections 640.740 through 640.747 is in response to Comment #9 below.

COMMENT #9: Mr. Robert Brundage with Newman, Comley, and Ruth, commented on page 1655 (Mo Reg), subsection (7), CAFO Indemnity Fund. Mr. Brundage stated the heading for subsection (7) says “in accordance with section 640.740, RSMo.” This citation is incomplete because the CAFO indemnity fund provisions are codified in sections 640.740 through 640.747 RSMo., not just 640.740 RSMo. This subsection does not say that CAFOs are required to submit CAFO indemnity payments pursuant to the sections 640.740 through 640.747 RSMo., or that the department is required to administer the indemnity fund pursuant to sections 640.740 through 640.747 RSMo.

RESPONSE AND EXPLANATION OF CHANGE: The Department has changed 10 CSR 20-6.300(7) to correctly reference sections 640.740 through 640.747, RSMo.

COMMENT #10: Ms. Francine Glass, citizen, Ms. Laurie Lakebrink, citizen, Ms. Denise Baker, citizen, C. Wulff, citizen, Ms. Joyce Wright, citizen, and Ms. Kathleen Dolson, citizen, had similar comments which are summarized as follows: “Please do NOT change this rule, 10 CSR 20-6.300. I am concerned that the proposed deletions in the rule remove the requirement for CAFOs to apply for permits 90 and 180 days prior to the start of operation and remove specific provisions for neighbor notice requirements.”

RESPONSE: Executive Order 17-03 required all state agencies to review regulations for ineffective, unnecessary, or unduly burdensome requirements. Portions of this regulation that are contained in other statutes and regulations are duplicative and unnecessary therefore, have been removed. Removal of these duplicative sections does not remove the duty to comply with those requirements contained in other state statutes and regulations. There is no statutory requirement for the time frame for submittal of new operating permit applications. Neighbor notice requirement are contained in Section 640.715 RSMo., and must still be complied with. No changes were made as a result of these comments.

COMMENT #11: Maisah Khan with Missouri Coalition for the Environment filed comments that in 10 CSR 20-6.300, there are deletions that remove timelines for Concentrated Animal Feeding Operations (CAFOs) to submit permits and deletions related to neighbor notice requirements. While the neighbor notice requirements appear in the statute 640.715 RSMo, it is imperative that these requirements be kept as part of the rule in order to ensure public participation and engagement in the process. Overall, MCE urges the DNR to maintain rules related to CAFO operations that protect public health and the environment. MCE believes that local communities and rural families in Missouri must have access to information about new

CAFO permits, and they must have the opportunity to provide feedback on new CAFO operations.

RESPONSE: Executive Order 17-03 required all state agencies to review regulations for ineffective, unnecessary, or unduly burdensome requirements. Portions of this regulation that are contained in other statutes and regulations are duplicative and unnecessary therefore, have been removed. Removal of these duplicative sections does not remove the duty to comply with those requirements contained in other state statutes and regulations. There is no statutory requirement for the time frame for submittal of new operating permit applications. Neighbor notice requirement are contained in Section 640.715 RSMo., and must still be complied with. No changes were made as a result of this comment.

COMMENT #12: Ms. Jeanne Heuser, citizen, stated that this is the primary CAFO rule that has been used for some years; she has an important familiarity with its contents. Now the rule will be confused by having to reference back and forth between state rules and statutes, as well as federal rules. It seems the most essential sections of the rule are eliminated by referencing to these other locations, where the descriptions are not as clearly defined as can be seen in 10 CSR 20-6.300(3)(B)1. To the citizen, it might seem there is an intentional obfuscation occurring, rather than a red-tape reduction. In addition, the deletion of 10 CSR 20-6.300(2)(E)2, appears to be an obvious attempt to allow CAFO permits to be rushed through the process.

RESPONSE: 10 CSR 20-6.300(3)(B)1 incorporates federal regulations into the state regulation to ensure compliance with the federal regulations.

COMMENT #13: Dana Gray, citizen, Arlene Sandler, citizen, Tom Abeln, citizen, Margaret O’Gorman, and Caroline Pufalt, Sierra Club Missouri Chapter, all had similar comments, which are summarized here:

You are removing the requirement in (2)2 for CAFOs to apply for permits 90 and 180 days before starting operation and removing specific provisions for neighbor notice requirements. Don't change 10 CSR 20.6.300. These operations are killing our environment, our water, our animals and ultimately, US!!!

RESPONSE: The Department has developed regulations in 10 CSR 20-8.300 for the design of manure storage structures as well as operational requirements in 10 CSR 20.6.300. Both regulations impose a no-discharge effluent limitation requirement on CAFOs for the protection of surface water and groundwater. No changes were made as a result of these comments.

COMMENT #14: Department staff recognized a grammatical clarification was needed to Section (3)(F) as well as in Section (4)(A)1.

RESPONSE AND EXPLANATION OF CHANGE: The grammatical clarification was made to Section (3)(F) and Section (4)(A)1.

10 CSR 20-6.300-Concentrated Animal Feeding Operations

(3)(B) Buffer Distances. Buffer distances shall be in accordance with Section 640.710 RSMo. unless exempted below:

(3)(C) Neighbor Notice Requirements. Neighbor notice shall be conducted in accordance with section 640.715 RSMo.

1. Acceptable forms of proof for submittal that neighbor notice was sent include copies of mail delivery confirmation receipts, return receipts, or other similar documentation.

(3)(F) Annual Reports. This section is required for NPDES operating permits only. Annual reports shall comply with the federal regulation 40 CFR 122.42(e)(4), "Annual reporting requirements for CAFOs," Jan. 8, 2018, as published by the Office of the Federal Register, National Archives and Records Administration, Superintendent of Documents, Pittsburgh, PA 15250-7954, which is hereby incorporated by reference and does not include later amendments or additions.

(3)(H) Additional Requirements for Class IA CAFOs only. Secondary containments shall be installed in accordance with Section 640.730 RSMo. Inspections shall be conducted in accordance with Section 640.725 RSMo. in addition to the following:

1. Inspections shall also include 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. Secondary 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. 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. A record of inspections when the water level is less than twelve (12) inches from the emergency spillway shall be included with the operations annual report.

(4)(A)1. New and expanding CAFOs shall be designed and constructed in accordance with 10 CSR 20-8.300.

(4)(A)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. A discharge resulting from a land application conducted during wet weather conditions is not considered an agricultural stormwater discharge and is subject to permit requirements. The Department will

determine, within a reasonable time frame, when a chronic weather event is occurring for any given county in Missouri. The determination 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.

(7) Concentrated Animal Feeding Operation Indemnity Fund for Class IA CAFO.

(A) Participation in the Concentrated Animal Feeding Operating Indemnity Fund and its administration shall be in accordance with sections 640.740 through 640.747, RSMo.

(B) For facilities permitted after June 25, 1996, the annual fee shall commence on the first anniversary of the operating permit

(C) In no event shall a refund exceed the unencumbered balance in the Concentrated Animal Feeding Operation Indemnity Fund.

(D) Each payment shall identify the following: state operating permit number, payment period, and permittee's name and address. Persons who own or operate more than one (1) operation may submit one (1) check to cover all annual fees, but are responsible for submitting the appropriate information to allow proper credit for each permit file account.

(E) Annual fees are the responsibility of the permittee. Failure to receive a billing notice is not an excuse for failure to remit the fees.