

history, please consult the *Code of State Regulations*. Amended: Filed May 2, 2008.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) 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 comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before July 16, 2008, and should include a reference to Commission Case No. EX-2008-0226. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov> (EFIS/Case Filings). A public hearing regarding this proposed amendment is scheduled for July 16, 2008, at 10:00 am in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

**SPECIAL NEEDS:** Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

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

**PROPOSED AMENDMENT**

**10 CSR 20-6.010 Construction and Operating Permits.** The department is amending subsection (1)(B).

**PURPOSE:** The commission proposes to amend this rule in order to provide an exemption for the application of pesticides from the permitting regulations. The application of pesticides must be consistent with federal and state regulatory requirements.

(1) Permits—General.

(B) The following are exempt from permit regulations:

1. Nonpoint source discharges;
2. Service connections to wastewater sewer systems;
3. Internal plumbing and piping or other water diversion or retention structures within a manufacturing or industrial plant or mine, which are an integral part of the industrial or manufacturing process or building or mining operation. An operating permit or general permit shall be required, if the piping, plumbing, or structures result in a discharge to waters of the state;
4. Routine maintenance or repairs of any existing sewer system, wastewater treatment facility, or other water contaminant or point source;
5. Single family residences; [and]
6. The discharge of water from an environmental emergency cleanup site under the direction of, or the direct control of, the Missouri Department of Natural Resources or the Environmental Protection Agency (EPA), provided the discharge shall not violate any condition of 10 CSR 20-7.031 Water Quality Standards;

7. Water used in constructing and maintaining a drinking water well and distribution system for public and private use, geologic test holes, exploration drill holes, groundwater monitoring wells, and heat pump wells; [and]

8. 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. The department may extend the permit exemption for up to one (1) additional year. 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, unless otherwise exempted under this rule or Chapter 6f.; and

**9. The application of pesticides in order to control pests in a manner that is consistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Missouri Pesticide Use Act.**

**AUTHORITY:** section 644.026, RSMo 2000. Original rule filed June 6, 1974, effective June 16, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 12, 2008.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE COST:** This proposed amendment will not cost private entities more than five hundred (\$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, Carol K. Garey, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to [carol.k.garey@dnr.mo.gov](mailto:carol.k.garey@dnr.mo.gov). Public comments must be received by September 17, 2008. A public hearing is scheduled at a meeting of the Clean Water Commission to be held at 9:00 a.m., September 10, 2008, in The Q Hotel and Spa, 560 Westport Road, Kansas City, Missouri 64111.

**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 department is amending the rule by reorganizing much of the existing and proposed content within 10 CSR 20-6.300 for a more logical and organized flow.

**PURPOSE:** This rulemaking sets forth permitting requirements for concentrated animal feeding operations, making the existing state regulation consistent with current federal regulations found in 40 CFR 122 and 412. The rulemaking also incorporates by reference portions of 40 CFR 412.

**PUBLISHER'S NOTE:** The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Definitions.

(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. Animal—Domestic animals, fowls, or other types of livestock except for aquatic animals;

3. Animal unit—A unit of measurement to compare various animal types at a concentrated animal feeding operation. One animal unit equals the following: 1.0 beef feeder or slaughter animal; 0.5 horse; 0.7 dairy cow; 2.5 swine weighing over 55 pounds; ~~15~~ 10 nursery pigs weighing less than 55 pounds; 10 sheep; 30 chicken laying hens; 60 chicken layer pullets; 55 turkeys; 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. Animal unit equivalent—An equivalent animal type and weight that has a similar amount of manure produced as one of the listed animal unit categories. This also applies to other animal types which are not specifically listed;

5. Catastrophic storm—A precipitation event of twenty-four (24)-hour duration that exceeds the twenty-five (25)-year, twenty-four (24)-hour storm event;

6. Chronic storm 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;

7. Class I and 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:

**1 Animal Unit =**

1.0	Beef feeder or slaughter animal	2.5	Swine weighing over 55 lbs.	30	Chicken laying hens
0.5	Horse	[15] ] 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**

	<b>Class IA</b> 7,000 AUs*	<b>Class IB</b> 3,000 to 6,999 AUs	<b>Class IC</b> 1,000 to 2,999 AUs	<b>Class II</b> 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.	[105,000] 70,000	[45,000] 30,000 to [104,999] 69,999	[15,000] 10,000 to [44,999] 29,999	[4,500] 3,000 to [14,999] 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)

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;

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;

12. Flush system—Any animal waste moving or removing system utilizing liquid as the primary moving and removal force from animal containment buildings, as opposed to a primarily mechanical or automatic device;

**13. Land application area—Agricultural land which is under the 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;**

[13.]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 [of process wastes] so as to allow runoff of applied process wastewater during land application;

[14.]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. Multi-year phosphorus application—Phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, 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;**

[15.]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 [wastes] wastewater and associated storm water flows except for discharges that are caused by catastrophic storm events;

B. Manure, litter, or [P]process [wastes] 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;

[16.]18. Occupied residence—A dwelling place for people which is inhabited at least fifty percent (50%) of the year;

[17.]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;

[18.]20. Operating location—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 of wastes. State and county roads are not considered property boundaries for purposes of this rule;

**21. 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;**

[19.]22. [Process wastes—Process waste includes manure, wastewater and any precipitation which comes into contact with any manure, litter or bedding or any other raw material or intermediate or final material or product used in the production of animals or direct products. It includes spillage or overflow from animal watering systems; washing, cleaning or flushing of pens, barns, manure pits or other associated animal operations; washing or spray cooling of animals; dust control; storm water runoff from animal confinement areas and loading and unloading areas; storm water runoff from deposits of airborne dust from building ventilation systems or spillage of feed or manure; discharges from land application fields that occur during land application; and storm water runoff from land application fields if wastes are applied during frozen, snow covered or saturated soil conditions or if application rates exceed the maximum nitrogen utilization of the vegetation grown;] Process wastewater—Water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from 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;

23. Production area—That part of an operation that 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 silos, silage bunkers, and bedding materials. 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 mortalities;

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

25. 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;

[21.]26. 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 handling system also includes all gravity outfall 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 [wastes] 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(5)] 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 runoff and return flows from irrigated agriculture 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. A precipitation related discharge of manure, litter, or process wastewater from land application areas under the control of a CAFO is considered agricultural stormwater runoff.**

[(E) Design Standards.

1. Process wastewater systems shall be designed in accordance with the design standards rule under 10 CSR 20-8; and

2. Effluent limitations for feedlots under 40 CFR 412 are hereby incorporated by reference. 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).]

[(3) Permits.

(A) 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.

(B) Applications for permits shall include a professional engineer's seal affixed to all engineering plans and engineering certifications.

(C) *Class IA concentrated animal feeding operations that use wet handling systems shall be required to comply with the following minimum permit related requirements:*

1. *Applications for permits shall include a list of mailing addresses for all adjacent property owners and applicable planning and zoning agencies;*

2. *Permittee shall retain the services of a full-time resident engineer during lagoon seal construction and compaction tests for inspection and certification;*

3. *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);*

4. *The department shall be notified at least seven (7) days prior to the compaction and barrel testing dates to allow observation of the tests;*

5. *Permits shall require operational monitoring and reporting, including nutrient levels in wastewater that is land applied; 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; water level measurements in storage structures; operation of land application equipment and other pertinent information;*

6. *Permits shall require environmental monitoring and reporting, including nitrogen, phosphorus and potassium levels in soils; wastewater discharges that occur; storm water runoff from the property; in-stream monitoring of any waters of the state that adjoin or pass through the property; and groundwater monitoring wells, if determined to be necessary; and*

7. *Permits shall include a reopener clause to allow modification of the permit should future environmental data determine such is needed.*

(D) *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) *Closure of Waste Storage Structures.*

(A) *Facilities that cease operation, or plan to close lagoons and other waste storage structures, shall comply with the requirements in this section:*

1. *Class I concentrated animal feeding operations which cease operation shall continue to maintain a valid operating permit or until all lagoons and waste storage structures are properly closed according to a closure plan approved by the department; and*

2. *Other concentrated animal feeding operations that cease operation shall either close the waste storage structures in accordance with the closure requirements in subsection (4)(B) of this rule or shall continue to maintain all storage structures so that there is not a discharge to waters of the state.*

(B) *Closure Requirements.*

1. *Lagoons and waste storage structures shall be closed by removal and land application of all waste water and sludge;*

2. *The removed wastewater and sludge shall be land applied at agricultural rates for fertilizer not to exceed the maximum nutrient utilization of the land application site and vegetation grown and shall be applied at controlled rates so that there will be no discharge to waters of the state; and*

3. *After removal and proper land application of wastewater and sludge, the earthen basins may be demolished by removing the berms, grading and revegetation of the site so as to provide erosion control, or the basin may be left in place for future use as a farm pond or similar uses.*

(5) Requirements Under Sections 640.700–640.758, RSMo Supp. 1996

(A) Buffer Distances.

1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal containment building or waste holding basin 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) 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 concentrated animal feeding operations are exempt from buffer distance requirements if they meet all of the following criteria:

A. Have been 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

C. The operation 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 set back 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.

(B) Neighbor Notice Requirements for Construction Permits.

1. Prior to filing an application for a construction permit with the department, all Class I concentrated animal feeding operations shall provide the following information to all the parties listed in paragraph (5)(B)2. of this section:

A. The number of animals designed for the operation;

B. 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;

E. Notice that 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.

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

G. 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 Program;

B. The county governing body; and

C. All adjoining owners of property located within one and one-half (1 ½) times the buffer distances specified in subsection (5)(A). Distances are to be measured from the nearest animal confinement building or waste holding basin to the adjoining property line.

3. The construction permit applicant shall submit to the department proof the above notification has been sent.

4. All concentrated animal feeding operations shall submit to the department a map, approximate scale of 1" = 1,000', or a two (2) times enlarged copy of a United States Geological Survey 7.5 minute quadrangle map. The map shall show the operation layout, buffer distances 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.

(C) Class IA Requirements.

1. The owner or operator of any Class IA concentrated animal feeding operation utilizing flush wet handling systems shall employ one (1) or more persons who shall visually inspect the animal waste wet handling facility and holding basins. 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. 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.

3. Secondary containment structure.

A. All Class IA concentrated animal feeding operations utilizing flush systems shall have a containment structure(s) or earthen dam(s).

B. 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.

C. Construction permit(s) shall be required for the design and construction of the containment structures for all new facilities.

4. Any unauthorized discharges by 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, shall be reported to the department and to all adjoining property owners of the facility within twenty-four (24) hours.

(D) Concentrated Animal Feeding Operation Indemnity Fund.

1. Class IA concentrated animal feeding operations utilizing flush systems, shall pay an annual fee of ten cents (10¢) per animal unit to the department for deposit in the Concentrated Animal Feeding Operations Indemnity Fund.

2. The annual fee shall be based upon the animal unit permitted capacity of the facility.

3. The annual fee shall be collected each year for ten (10) years on the anniversary date of the operating permit. For facilities permitted after June 25, 1996, the annual fee shall commence on the first anniversary of the operating permit. The annual fee for facilities permitted prior to June 25,

1996, shall commence on the first full year anniversary of the permit following June 25, 1996.

4. In the event the department determines that a Class IA facility has been successfully closed by the owner or operator, all moneys paid by such operations into the Concentrated Animal Feeding Operation Indemnity Fund shall be returned to the operation. In no event, however, shall this refund exceed the unencumbered balance in the Concentrated Animal Feeding Operation Indemnity Fund.

5. The fees referenced in subsection (5)(D) shall be paid by a check or money order and made payable to the State of Missouri, Concentrated Animal Feeding Operation Indemnity Fund. In the event a check used for the payment of operating fees is returned to the department marked insufficient funds, the person forwarding the check shall be given fifteen (15) days to correct the insufficiency.

6. Fees shall be submitted to: Department of Natural Resources, Water Pollution Control Program, Permit Section, P.O. Box 176, Jefferson City, MO 65102.

7. 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.

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

### (3) Permits.

#### (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.

#### (B) Buffer Distances.

1. All Class I concentrated animal feeding operations shall maintain a buffer distance between the nearest animal confinement building or waste holding basin 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) 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 concentrated animal feeding operations are exempt from buffer distance requirements if they meet all of the following criteria:

A. Have been 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

C. The operation 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.

#### (C) Neighbor Notice Requirements for Construction Permits.

1. Prior to filing an application for a construction permit with the department, all Class I concentrated animal feeding operations shall provide the following information to all the parties listed in paragraph (3)(C)2. of this section:

A. The number of animals designed for the operation;

B. 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;

E. Notice that 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;

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

G. 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 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 or waste holding basin to the adjoining property line.

3. The construction permit applicant shall submit to the department proof the above notification has been sent.

4. All concentrated animal feeding operations shall submit to the department a map, approximate scale of one inch equal one thousand feet (1" = 1,000'), or a two (2) times enlarged copy of a United States Geological Survey 7.5 minute quadrangle map. The map shall show the operation layout, buffer distances, 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.

1. Permits shall require the following minimum visual inspections:

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;



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 that any deficiencies found as a result of inspections be corrected as soon as possible.

(E) Record Keeping.

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 permit application including the nutrient management plan;

B. Records documenting the 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;

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;

J. Date(s) of manure application equipment inspection.

(F) Annual Reports.

1. 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 that have occurred in the previous twelve (12) months, including date, time, and approximate volume;

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. 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 paragraphs (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. CAFOs with coverage under a general operating permit issued prior to February 27, 2009, must have their nutrient management plans developed and implemented by February 23, 2011. All other CAFOs that receive either a general or site-specific operating permit after February 27, 2009, must have a nutrient management plan developed and implemented 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, 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 by the Clean Water Commission. Such technical standards for nutrient management shall—

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.

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.



**(H) Class IA Requirements.**

1. The owner or operator of any Class IA concentrated animal feeding operation utilizing flush wet handling systems shall employ one (1) or more persons who shall visually inspect the animal waste wet handling facility and holding basins. 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 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, 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.

**(4) Design Standards.**

(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.

(5) Nutrient Management Plans—Nutrient management plans must, to the extent applicable—

(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;

(D) Prevent direct contact of confined animals with waters of the state;

(E) Ensure that chemicals and other contaminants handled on-site 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;

**(6) Closure of Waste Storage Structures.**

(A) Facilities that cease operation, or plan to close lagoons and other waste storage structures, shall comply with the requirements in this section—

1. Class I concentrated animal feeding operations which cease operation shall continue to maintain a valid operating permit or until all lagoons and waste storage structures are properly closed according to a closure plan approved by the department; and

2. Other concentrated animal feeding operations that cease operation shall either close the waste storage structures in accordance with the closure requirements in subsection (6)(B) of this

rule or shall continue to maintain all storage structures so that there is not a discharge to waters of the state.

**(B) Closure Requirements.**

1. Lagoons and waste storage structures shall be closed by removal and land application of all wastewater and sludge;

2. The removed wastewater and sludge shall be land applied at agricultural rates for fertilizer not to exceed the maximum nutrient utilization of the land application site and vegetation grown and shall be applied at controlled rates so that there will be no discharge to waters of the state; and

3. After removal and proper land application of wastewater and sludge, the earthen basins may be demolished by removing the berms, grading, and revegetation of the site so as to provide erosion control, or the basin may be left in place for future use as a farm pond or similar uses.

**(7) Concentrated Animal Feeding Operation Indemnity Fund.**

(A) Class IA concentrated animal feeding operations utilizing flush systems, shall pay an annual fee of ten cents (10¢) per animal unit to the department for deposit in the Concentrated Animal Feeding Operations Indemnity Fund.

(B) The annual fee shall be based upon the animal unit permitted capacity of the facility.

(C) The annual fee shall be collected each year for ten (10) years on the anniversary date of the operating permit. For facilities permitted after June 25, 1996, the annual fee shall commence on the first anniversary of the operating permit. The annual fee for facilities permitted prior to June 25, 1996, shall commence on the first full year anniversary of the permit following June 25, 1996.

(D) In the event the department determines that a Class IA facility has been successfully closed by the owner or operator, all moneys paid by such operations into the Concentrated Animal Feeding Operation Indemnity Fund shall be returned to the operation. In no event, however, shall this refund exceed the unencumbered balance in the Concentrated Animal Feeding Operation Indemnity Fund.

(E) The fees referenced in section (7) shall be paid by a check or money order and made payable to the State of Missouri, Concentrated Animal Feeding Operation Indemnity Fund. In the event a check used for the payment of operating fees is returned to the department marked insufficient funds, the person forwarding the check shall be given fifteen (15) days to correct the insufficiency.

(F) Fees shall be submitted to Department of Natural Resources, Water Pollution Control Program, Permit Section, PO Box 176, Jefferson City, MO 65102.

(G) 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.

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

**[[6]](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 issuing 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 *[(6)/(F)](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 *[(6)/(F)](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 *[(6)/(B)](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 condition 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 ~~[(6)(E)](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 ~~[(6)(f) 12.](8)(f)12.~~

11. New confinement operations shall comply with the design standards in subsections ~~[(2)(C)](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 [1997] 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.*

*PUBLIC COST: This proposed amendment will cost the Department of Natural Resources thirty-one thousand three hundred forty-three dollars and thirty-nine cents (\$31,343.39) in the aggregate. This total estimated aggregate cost to the department is a multi-year aggregate. It is anticipated that this cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.*

*PRIVATE COST: This proposed amendment will cost Concentrated Animal Feeding Operations, (CAFOs), seventy thousand seven hundred fifty dollars (\$70,750) in the aggregate. This total estimated aggregate cost to the operations is a multi-year aggregate. It is anticipated that this cost will recur for the life of the rule, may vary with inflation and increase at the rate projected by the Legislative Oversight Committee.*

*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 derrick.steen@dnr.mo.gov. Public comments must be received by September 17, 2008. The public hearing is scheduled at a meeting of the Clean Water Commission to be held at 9:00 a.m., on September 10, 2008, in The Q Hotel and Spa, 560 Westport Road, Kansas City, Missouri 64111.*

**FISCAL NOTE  
PUBLIC COST**

- I. Department Title: Department of Natural Resources  
Division Title: Clean Water Commission  
Chapter Title: Water Quality**

<b>Rule Number and Name:</b>	<b>10 CSR 20-6.300 Concentrated Animal Feeding Operations</b>
<b>Type of Rulemaking:</b>	Proposed Rule Amendment

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
<b>Department of Natural Resources</b>	<b>\$31,343.39 for .36 FTE</b>

**III. WORKSHEET**

<b>NPDES Permit Fee Fund Expenses</b>	<b>FY 2009 (4 Months)</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
Salaries (Based on EE II Range 29 Step L - .36 FTE)	(\$14,732.00)	(\$18,209.00)	(\$18,755.00)	(\$19,317.65)	(\$19,897.18)	(\$20,494.09)
Fringe Benefits @ 45.26% * .36 (Based on FY08 Rate)	(\$6,668.00)	(\$8,241.00)	(\$8,489.00)	(\$8,743.67)	(\$9,005.98)	(\$9,276.16)
Equipment and Expense (.36 of Standard EE Coding)	(\$2,003.00)	(\$2,063.00)	(\$2,126.00)	(\$2,189.78)	(\$2,255.47)	(\$2,323.14)
<b>TOTAL FUND COSTS - ALL CATEGORIES</b>	<b>(\$23,403.00)</b>	<b>(\$28,513.00)</b>	<b>(\$29,370.00)</b>	<b>(\$30,251.10)</b>	<b>(\$31,158.63)</b>	<b>(\$32,093.39)</b>
(743 Total Hours / 2,080 hours [1 FTE] = .36 FTE)						
<b>NPDES Permit Fee Fund Revenue</b>	<b>FY 2009 (4 Months)</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
CAFO Permit Fees <55 lbs (5 new permits per year)	\$750.00	\$0.00	\$0.00	\$0.00	\$0.00	\$750.00
(5 Apps * \$150 Fee Paid Every Five Years)						
<b>Total Permit Fee Revenue:</b>	<b>\$750.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$750.00</b>

NPDES Permit Fee Fund Revenue	FY 2009 (4 Months)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Estimated Net Effect on Permit Fee Fund:	(\$22,653.00)	(\$28,513.00)	(\$29,370.00)	(\$30,251.10)	(\$31,158.63)	(\$31,343.39)
Estimated Net Effect on Permit Fee Fund Total Revenue:	(\$22,653.00)	(\$28,513.00)	(\$29,370.00)	(\$30,251.10)	(\$31,158.63)	(\$31,343.39)

Fiscal impact derived from the three primary components in the proposed amendment –

\* New permit application requirements, due to a lower animal threshold change including swine <55 lbs., i.e. estimated review of 5 applications in the 1<sup>st</sup> year of a 5-year construction permit or 5 x 20 hrs. per application = 100 hrs. per year

\*\* New loss assessment requirements for phosphorus, reducing the load in surface water to comply with the new Nutrient Management Plan criteria, i.e. estimated review of 60 applications or 60 x 5 hrs. per application = 300 hrs. per year

\*\*\* New annual reporting requirements, i.e. reviewing 1/3 of an estimated 520 permits per year or .333 x 520 x 2 staff hrs. per report = 346 hrs. per year

\*\*\*\* Total hours of staff review required = 746 (746 Total Hours / 2,080 hours [1FTE] = 3.6 FTE)

NPDES Permit Fee Fund Revenue for an estimated 5 operating permit applications, i.e. 5 permit applications. x \$150 fee, paid every five years or \$750.00.

#### 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 department must review annual reports of permit operators to ensure compliance with the new federal requirements. These reviews of new application requirements, the new phosphorus loss assessment and Nutrient Management Plan (NMP) criteria and review of annual reports, requires additional staff hours.

For the department, the employee costs are calculated using the annual salary multiplied by the FY 2008, 45.26% fringe benefit rate. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. Equipment and expense are calculated according to a standard



code for FY2008, Environmental Engineer II. First-year equipment and expense costs reflect the initial office set-up for the employee.

It is anticipated that all costs are expected to increase at the rate projected by the Legislative Oversight Committee. A 3% rate of inflation is applied to personnel costs. The FY2009 reflects that portion of the first full fiscal year the rule is effective, or 4 months, and reflects the new permit application requirements.

The Water Protection Program, permitting and engineering section, conducts permit reviews prior to issuing a construction permit. The technical review is conducted by an Engineer II with expertise in environmental engineering analysis.

The public fiscal note for this rulemaking reflects the cost to the department resulting from the technical review and analysis of the estimated five (5) permit applications, new NMP criteria, and the annual reporting requirements, resulting in 746 total hours of staff review. The Estimated Net Effect, \$22,653, on the NPDES Permit Fee Fund, is based on the fees collected, \$750.00, (\$150.00 per permit application), and accruing to fee revenues in the first year and once every five (5) years for operating permit renewals.

\* Fiscal impact is based on the new application requirements resulting in increased staff time to review operating permit applications in the first year. The new application requirements, lowering the animal threshold number for swine weighing less than 55 pounds in the animal category for nursery swine, are based on the new federal requirements.

A small number of nursery swine sites, five (5), thought to be operating within the impacted animal number range of 10,000 to 15,000, will be impacted under this proposed rulemaking. No new large nursery swine operations are expected due to current trends in the swine industry.

\*\* The amended rulemaking language includes expanded criteria to comply with the required Nutrient Management Plans (NMPs). An NMP includes the strategies producers use to ensure manure storage and manure application on farms. New requirements in the NMPs will now include plans that require phosphorus loss assessment as well as continuing to assure that surface or groundwater are not adversely affected. This is expected to result in improved manure management to protect water quality due to a greater emphasis on the proper management of animal manure at the production site and on land application sites.

Expanded Best Management Practices (BMPs) include the new phosphorus loss assessment requirement and nutrient management plan criteria necessary to meet minimum federal requirements.

\*\*\* Annual reporting requirements are needed to meet the current federal requirements. The department proposes to review one-third of the annual reports, in detail every year with an expectation that every permitted facility will receive a review of their annual report at least once per permit cycle.

These expanded requirements will help Concentrated Animal Feeding Operations (CAFO) to analyze decisions and test results from previous years and make appropriate adjustments to the nutrient management plan to maximize the nutrient benefits.

CAFOs have always been required to submit annual reports to the department. The Environmental Protection Agency has increased its reporting requirements to assure operators comply with new and current regulatory and permit practices.

The cost in the aggregate to the department is estimated to be \$31,343.39 to comply with this rulemaking. This aggregate cost may be considered a multi-year aggregate due to the cyclical nature of the permitting process and to accommodate the cyclical nature of the rule requirements. The revenue collected based on fees paid to renew the estimated number of operating permits in the first year, and the revenue collected based on fees paid to renew every (5) years thereafter, is the same, absent a change in the fees.

The Estimated Net Effect to the department's NPDES (National Pollutant Discharge Elimination System) Permit Fee Fund in FY2009 is \$22,653.00. This is the cost to the department for staff salaries, expense and equipment and fringe benefits less permit application fee revenue.

The Estimated Net Effect on the department's Permit Fee Fund in FY2010 is \$28,513.00, in FY2011 is \$29,370.00, in FY2012 is \$30,251.10, in FY2013 is \$31,158.63, and in FY2014 is \$31,343.39. FY2014 reflects the multi-year aggregate cost which will recur every 5 years.

\*\*\*\* The FY2009 is a partial fiscal year reflecting the four (4) months the rulemaking is in effect during the first year. Approximately 693 hours of staff review are possible in the first year. Of the total hours needed for review, 746, there remain approximately 52 hours that cannot be worked within the usual 40 hour week. As a result, 12 hours, or 2.4 additional hours per day in the final week of the 4 month period, are required to complete the reviews.

**FISCAL NOTE  
PRIVATE COST**

- I. Department Title: Title 10 – Department of Natural Resources  
Division Title: Division 20 – Clean Water Commission  
Chapter Title: Chapter 6 – Permits**

<b>Rule Number and Title:</b>	<b>10 CSR 20-6.300 Concentrated Animal Feeding Operations</b>
<b>Type of Rulemaking:</b>	Proposed Rule Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<b>5 Concentrated Animal Feeding Operations (CAFOs) General Operating Permits</b>	<b>112 – Animal Production</b>	<b>\$750</b>
<b>500 CAFO Permit Sampling Cost</b>	<b>112 – Animal Production</b>	<b>Total Cost: \$70,000</b>
<b>5 CAFO Permit Fee Applications Plus Sampling Cost for 500 CAFOs</b>	<b>112 – Animal Production 112 – Animal Production</b>	<b>Total Aggregate: \$70,750</b>

**II. WORKSHEET**

<b>Private Entity Costs – CAFO Facilities</b>	<b>FY 2009 (4 Months)</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>
CAFO Permit <55 lbs (NPDES Permit Fee - \$150 * \$5 = \$750)	(\$750)	\$0	\$0	\$0	\$0	(\$750)
CAFO General Permit - Sampling Costs for 500 CAFO Facilities (500 * \$140 = \$70,000)	\$0	(\$70,000)	(\$70,000)	(\$70,000)	(\$70,000)	(\$70,000)
<b>ESTIMATED NET FISCAL EFFECT FOR PRIVATE INDUSTRY:</b>	<b>(\$750)</b>	<b>(\$70,000)</b>	<b>(\$70,000)</b>	<b>(\$70,000)</b>	<b>(\$70,000)</b>	<b>(\$70,750)</b>



**Fiscal impact based on three primary components –**

\* New application requirement, lowering the animal threshold change to swine <55 lbs. The 5 new general operating permits x the \$150 fee, is \$750.

\*\* Phosphorus assessment requirement to reduce the phosphorus load in surface water – CAFO (Concentrated Animal Feeding Operations) operators with general operating permits are expected to collect an average of 6 soil samples, \$10 per sample and 2 manure samples, \$40 per sample. Based on total sampling cost of \$140 per CAFO operator, for the estimated 500 CAFO general operating permits the cost is \$70,000 per year.

CAFO operators that have a site specific permit conduct the sampling and therefore will not incur any additional 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 cost identified in this fiscal note.

\* The worksheet estimates cost associated with the new application requirement that lowers the animal threshold to less than 55lbs.

**Swine < 55 lbs category change –**

Facilities that were not previously permitted due to the lowering of the classification range may be required to obtain a permit. An estimated five (5) facilities will need to get a permit due to size.

\*\* The worksheet estimates the cost associated with the additional sampling requirements for soil and manure for those having general operating permits. The required samples are taken in the fall. There are no sampling costs incurred during the last 4 months of FY 2009 of the effective rule.

**Phosphorus assessment –**

All general permit operations will eventually be required to complete a phosphorus assessment on the land used for land application. The owner will need to conduct routine soil and manure testing ensuring the nutrients are being applied at appropriate rates. On average, 6 soil samples will be necessary per year and 2 manure samples will be necessary per year.

It is anticipated that the total sampling cost will recur for the life of the rule.

The aggregate cost, i.e. an annualize aggregate, or total lifetime cost, to privately owned Concentrated Animal Feeding Operations (CAFOs) for general operating permits fee applications (\$750.00) and sampling (\$70,000) is \$70,750.

The aggregate cost, \$70,750, may be considered a multi-year aggregate since fees paid to renew the estimated number (5) of operating permits in the first year, and the fees paid to renew every (5) years thereafter, are the same, absent a change in the fees. First-year costs reflect the permit fee application. The aggregate cost may be considered a multi-year aggregate due to the cyclical nature of the permitting process and to accommodate the cyclical nature of the rule requirements.

The Estimated Net Effect on Private Industry in FY2009 is \$750. Given that sampling is done in the fall, no sampling costs occur during the first four (4) months the rule is effective.

The Estimated Net Effect on Private Industry in FY2010 is \$70,000, in FY2011 is \$70,000, in FY2012 is \$70,000, in FY 2013, is \$70,000, and in FY2014 is \$70,750. FY2014 reflects the multi-year aggregate cost which will recur every 5 years.