

M E M O R A N D U M

TO: Members of the Odor Rule Workgroup

FROM: Joseph P. Bindbeutel, Senior Chief Counsel
Agriculture and Environment Division
Office of the Attorney General

DATE: June 22, 2007

RE: *Odor Rule Proposal*

The Workgroup's efforts are critical in protecting all Missourians' fundamental property right to be free from nuisance conditions, which interfere with the peaceful use and enjoyment of their homes and farms. In view of the tremendous number of odor complaints received by DNR, strengthening the State's odor regime is critical in addressing this threat to Missourians' property rights. The members of the Workgroup have thoroughly discussed any number of potential alternatives to Missouri's current odor rules and enforcement practices. In addressing this challenge, the state's odor control regime should be tailored to specifically address individual odor-emitting industries, both in terms of finding the most economic and effective odor control strategies, as well as limiting costs of compliance to only those entities which are causing nuisance odors.

TECHNOLOGY BASED ODOR STANDARD

As such, we recommend the Commission adopt new odor control rules separate and apart from the current 7:1, penalty-driven standard by adopting a technology based standard which:

1. Establishes a more protective odor tolerance threshold than 7:1. We would suggest a 2 or 3:1 threshold;¹
2. In the event a firm violated this standard with some pre-established frequency (i.e. more than once a month, four times per year, etc.), it could be required by DNR to do a comprehensive evaluation of its operations and identify its odor sources and to submit an analysis of reasonable treatment alternatives in accordance with an established technical and regulatory standard (such as Reasonably Available Control Technology, ("RACT") or Best Available Control Technology, ("BACT") etc) to control each such source.
3. If there were treatment technologies or process changes which met the chosen standard, DNR could then direct the company to install the indicated device or process change pursuant to a reasonable schedule. Of course, affected parties would have the right to appeal any final agency determinations by the Department to the Air Conservation Commission and the courts.

¹ Exceedance of this standard would not trigger any enforcement activity or penalty liability. It would only require the source to implement the fix. If a source refused to determine its odor sources and do the analysis of possible "solutions," penalties would be imposed.

4. Once a company had implemented what the Department determined was an appropriate level of odor controls, it could not be compelled to repeat this process unless the Department demonstrated new and more effective (BACT or RACT) technologies existed, or a suitable time had passed - such as no less than 3 years.

5. Agricultural facilities should be recognized as operating in a highly competitive and therefore cost-sensitive environment. As a result, the technology standard chosen should specifically account for the size, nature and financial strength of an operation - be it an independent producer, or an operation fully integrated into a larger production scheme. For many facilities, Best Management Practices and adherence to industry standards of responsible manure, animal and facility management may well satisfy the applicable standards. More substantial or integrated facilities would be expected to invest more. Such "affordability tests" are common throughout environmental regulations at both the federal and state levels.

OTHER RECOMMENDATIONS

The Commission should also review its other rules and staff practices to implement the following:

- A. The survey requirement in the rule applicable in the St. Louis area is not workable and should be dropped. An inspector is expected to determine who has been exposed to a given odor, whether the number of persons affected is more or less than 20, and what percentage of them find the odor offensive. The 20:1 dilution standard for industrial sources is overly forgiving.
- B. The dilution-based standard should be adjusted in accordance with the likely receptors involved - one dilution at a property line, but other more stringent standard for homes, churches, public places, commercial property, incorporated municipalities, etc.
- C. Olfactometry should be dropped as a component of the odor enforcement approach. It is costly, cumbersome and does not add to the protection afforded Missourians.
- D. Companies seeking permits for operations which promise the most aggressive odor control regime should receive staff attention, review and permit issuance prior to applications which promise no more than minimally compliant measures ("Best in - First out").

Thank you for your consideration of these proposals. I look forward to completing our work on the rules and hopefully produce a better odor rule for Missouri.

JPB:ka

Joint Position Statement - Odor Rule Amendments

June 19, 2007

Endorsed by Workgroup Members:

Citizens Legal Environmental Action Network
(Terry Spence, Rolf Christen, Ted Heisel)

Sierra Club
(Ken Midkiff)

Dwayne W. Miller

Dilution Threshold – The dilution threshold for the odor standard should be lowered to 2:1 at receptors (homes, schools, public buildings, etc.). This position is supported by the fact that DNR continues to receive thousands of complaints under the existing standard, indicating that it is too weak to resolve odor problems. Many of these complaints go unaddressed because the dilution threshold is not met when inspectors measure the odor concentration. Staff from DNR and the Attorney General's Office with experience dealing with odor problems have verified during the stakeholder meetings that odor measurements below the existing standard of 7:1 are very offensive.

Sampling Methods – Compliance with the state odor regulation for CAFOs should be determined using the field sampling method alone. The current CAFO odor regulation requires that a field test be conducted as a screening measure and that samples then be collected and sent to an out-of-state laboratory. This process hinders enforcement of the odor regulation because of the time and expense required to send samples to the laboratory. Odor regulations applied to other facilities do not require this dual layer of testing. Moreover, there is some indication in scientific literature that transmitting odor samples can distort their strength.

1B and 1C CAFOs – Class 1B and 1C CAFOs should be covered by state odor rules. There is evidence that these facilities are causing odor problems and there is no justification for exempting them from the state rule. State records indicate that a substantial number of complaints are received relating to these facilities. DNR currently lacks the ability to address legitimate problems because these operations are exempted from the state rules.

Odor Control Plans – Odor control plans should be updated every five years or upon a violation of the ambient odor standard. In addition, criteria should be added to the rule upon which DNR must base its approval or disapproval of such plans. As indicated by presentations to the workgroup, odor control technology is evolving over time. Moreover, there already exist proven methods of controlling odors from CAFOs, such as biofilters, that are not used by the vast majority of CAFOs in Missouri. The odor control plan component of the regulation needs to be strengthened to ensure that CAFOs are taking all practicable steps to reduce odor emissions.

Common Law Liability – The state rules should contain an express provision that compliance does not serve as a defense to common law nuisance actions.

A signed letter will be brought to the meeting on Tuesday June 26.

June 26, 2007

Ms. Alice Geller
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Odor Rule Workgroup – Unified Position Statement

Dear Ms. Geller:

The following agricultural entities have participated in the Odor Rule Stakeholder Workgroup: Missouri Agribusiness Association, Missouri Pork Association, Missouri Egg Council, The Poultry Federation, Missouri Dairy Association, Missouri Cattlemen's Association, Premium Standard Farms, and Moark. After deliberating on the issues and proposals discussed during the workgroup meetings, our group has agreed upon the following unified position:

1. Support current olfactometry standard of 110:1 for Class IA CAFOs.
2. Support continued use of the scentometer as only a screening tool for Class IA CAFOs.
3. Oppose applying CAFO odor rule to CAFOs smaller than Class IA farms.
4. Support amending Class IA CAFO odor rule to exempt land application.
5. Support amending Class IA CAFO odor rule to require odor sampling beyond setback distances described in § 640.710 even if such location is “not at the installation” or beyond the permitted boundary of CAFO.
6. Support amending the Class IA CAFO odor rule to move compliance point to residences or public buildings instead of “not at the installation.”
7. Oppose an amendment to the odor rules that imposes a mandatory technology review and implementation at a D:T below 110:1 olfactometry for Class IA CAFOs or 7:1 scentometry for industry.
8. Support MDNR or University of Missouri opening and running an olfactometry laboratory.
9. Require MDNR inspectors to become “certified” on the scentometer.

In conclusion, the aforementioned agricultural entities strenuously oppose any efforts to eliminate the use of olfactometry or to reduce the odor detection threshold as described in the current rule. We urge the Missouri Department of Natural Resources to recommend to the Air Conservation Commission the above-described amendments to the livestock odor rule.

Ms. Alice Geller
June 26, 2007
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MISSOURI AGRIBUSINESS ASSOCIATION

MISSOURI PORK ASSOCIATION

MISSOURI EGG COUNCIL

PREMIUM STANDARD FARMS

THE POULTRY FEDERATION

MISSOURI DAIRY ASSOCIATION

MISSOURI CATTLEMEN'S ASSOCIATION

MOARK
