

## Missouri CAFO Rule Workgroup Meeting Notes

October 26, 2010 - 10:00am

Lewis and Clark State Office Building

LaCharrette Conference Room

### A. OVERVIEW OF PROPOSED CHANGES SINCE LAST MEETING –

The following are proposed changes ideas since the last meeting that were discussed. These changes are reflected in the CAFO Workgroup Strawman Drafts dated October 26, 2010. These drafts will be posted to the rule website located at:

<http://www.dnr.mo.gov/env/wpp/cafo-workgroup.htm>

#### 1. Definition of CAFO Classification –

The workgroup discussed the differences between the EPA and state rules on animal unit numbers and classifications. The two primary differences that currently exist include different animal thresholds for poultry and the mixing of animal units among animal types. When federal definitions and thresholds are the same or are consistent with the state rules, regulatory implementation is more consistent and more easily understood by the public. Missouri's animal numbers were modeled off of the previous federal program so the decision to remain consistent with EPA numbers appears to be logical and appropriate. This would make it easier to utilize EPA's interpretations, but more importantly, the regulated community would find it easier to navigate and understand Missouri's program. This change will have impact on permit numbers as changing the animal numbers to match EPA's numbers will result in around 50 broiler operations dropping below the current Class IC threshold.

In addition, EPA no longer mixes animal classifications when determining whether AFOs exceed the Large CAFO threshold. An example of this is, if a 2400 head finishing hog barn and a 60,000 head broiler barn was located on the same farm it would **not** constitute a large CAFO under EPA rule as neither animal type classification exceeds the EPA threshold. In addition, the same result would be had from a 2,400 head finishing hog barn and 8,000 head nursery hog barn as the regulations consider "swine over 55 lbs" and "swine under 55 lbs" to be separate animal types. The department has proposed a partial conformance to this EPA CAFO classification standard. The department is proposing to sum the animal units of all similar animal species on a farm. Doing so will ensure that all animals of a similar species are considered when determining classification. Once a farm is classified as a Class I CAFO, the animal units of all confined animals at the operating location will be summed to determine whether the operation is Class IA, IB, or IC.

The proposed revised definition is as follows:

10 CSR 20-6.300(1)(B)6.

*CAFO I and Class II Operation — An AFO or CAFO's class size is based on the operating level in animal units at one operating location. When determining whether an AFO or CAFO is a Class I or Class II size operation, all animal units within an individual animal species are summed together. Once a CAFO becomes a Class I operation, the animal units of all*

*confined animals at the operating location are summed to determine whether the operation is Class IA, IB, or IC. Operations that are smaller than the Class II category are considered unclassified. The Class categories, sorted by animal type, are presented in the following chart:*

## **2. Construction & Operating permit application process –**

The department is proposing a change in the way construction and general operating permits are issued for CAFOs. The purpose of the change is two fold. It is necessary to enable the department to continue the use of a general permit for CAFOs that require a NPDES permit, and secondly, it creates a more efficient permitting process for the department.

The new EPA CAFO rule requires that all NPDES CAFO general permits undergo an individual public notice process prior to issuance. For this public notice step to be meaningful, it must occur prior to the issuance of a construction permit. Consequently, the operating permit must be drafted at the same time the construction permit is drafted. The department is proposing that CAFOs submit both the construction and operating permit application (with fees) at the same time. The department will conduct a unified review of both the construction and operating applications, and if/when approval is granted, the department will issue both permits simultaneously. The application will be required to submit engineering certification prior to the expiration date of the construction permit which is typically one year after the permit is issued. The expiration date of the construction permit is a date that the department can easily track and follow up on.

To address this proposed concept the department drafted the following rule language.

*10 CSR 20-6.300(2)(F) Construction and Operating Permit Applications – This section describes the application process and requirements for CAFO construction and general operating permits.*

- 1) An application for a construction permit shall include the permit application documents required within the CAFO Design Rule at 10 CSR 20-8.300. The construction application shall also include the application for an operating permit along with all applicable permit fees. The department may require other information as necessary to determine compliance with the Missouri Clean Water Law and these regulations.*
- 2) An operating permit application for a facility that did not previously have a construction permit or Letter of Approval (LOA) shall include the permit application documents required within the CAFO Design Rule at 10 CSR 20-8.300. The operating permit application shall include both a construction and operating permit fee as the department will conduct an as-built review of the construction and engineering documents.*
- 3) All construction permit applications shall require engineering documents along with a professional engineer's seal affixed to such documents in accordance with 10 CSR 20-8.300.*
- 4) The department will not examine the adequacy or efficiency of the structural or mechanical components of the waste management systems. The issuance of permits will not include approval of such features.*

- 5) *An application for a construction permit should be submitted to the department at least one hundred eighty (180) days in advance of the date on which the proposed construction will begin. A separate application for each operating location must be submitted to the department.*
- 6) *When an application is submitted largely incomplete of its primary components, the department may return the entire permit application back to the applicant for re-submittal. When an application is submitted sufficiently complete, but is otherwise deficient, the applicant and the applicant's engineer will be notified of the deficiency and will be provided adequate time to address department comments and submit corrections. Processing of the application may be placed on hold until the applicant has corrected all deficiencies.*
- 7) *Applicants who fail to correct deficiencies and/or fail to satisfy all department comments after two (2) certified department comment letters shall have the application returned as incomplete and the construction and operating permit fees shall be forfeited. The department will grant reasonable time extensions when the applicant requests additional time to respond to department comments, however, such requests must be in writing and must occur prior to the department returning the application as incomplete.*
- 8) *When the department has received all documents and information necessary for a properly completed construction permit application, including appropriate permit fees, the department will, upon completion of the review and approval of said documents, act in one of the following ways:*
  - A. *For a facility seeking coverage under the State No-Discharge Permit the department will issue both the construction and the State No-Discharge Operating permit concurrently;*
  - B. *For a facility seeking coverage under the NPDES permit the department will post for 15 days on the department's webpage a notice of the pending CAFO NPDES permit. The notice will include an announcement of the opportunity for public review and comment on a CAFO's nutrient management plan and draft NPDES permit. The public may request, in writing, a 15 day extension to the public notice period for a permit, when necessary. The department will post the public notice of a pending CAFO NPDES permit and consider all comments before issuing the construction and operating permit. The construction and NPDES operating permit will be issued concurrently. A public notice will not be required prior to the issuance of a construction permit for a manure or wastewater pipeline or land application system.*
- 9) *Construction permits shall expire one (1) year from the date of issuance unless the permittee applies for an extension. The department shall extend construction permits only one time for a period not to exceed the originally issued effective period. An applicant requesting extension shall show that there have been no substantial changes in the original project. Extension requests should be received thirty (30) days prior to permit expiration.*
- 10) *When a construction permit is issued for a project for which the construction period is known in advance to require longer than one (1) year from the date of issuance, the department may issue a permit allowing a period of time greater than one (1) year upon the applicant showing that the period of time is necessary and that no substantial changes in the project will be made without first notifying the department. If there are substantial changes, the department may require the applicant to apply for a new construction permit.*

*11) Upon completion of construction and prior to the expiration date of the construction permit, the owner or operator for which a construction permit was issued shall submit in writing the engineering certification of the newly constructed systems. Engineering certification will document that the project was completed in accordance with approved plans and specifications. If changes were made during construction, as-built drawings of said changes shall be submitted with the certification in accordance with 10 CSR 20-8.300.*

### **3. Changes to 10 CSR 20-8.300 –**

The department provided a red line strikeout version of the CAFO storage design rule that identifies the revisions made since the last workgroup meeting. This revised document will be posted to the rulemaking webpage.

### **B. CONCLUSION; REVIEW OF RULEMAKING SCHEDULE**

The department has not scheduled another workgroup meeting in 2010. The department does not anticipate another meeting will be necessary until early 2011. This meeting will take place prior to the two rules being presented to the Clean Water Commission in March and May.

The following is the anticipated CAFO rulemaking schedule:

December 2010 – Public Notice of Regulatory Impact Report (RIR) for 10 CSR 20-8.300

March 2, 2011 - Proposed 10 CSR 20-6.300 Rule to CWC

May 4, 2011 - Proposed 10 CSR 20-8.300 Rule to CWC

June 2011 – Proposed rules published in Missouri Register.

February 2012 – Effective date of both Rules