



STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Matt Blunt, Governor • Doyle Childers, Director

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August 14, 2006

Water Docket  
Environmental Protection Agency  
Mail Code 4203M  
1200 Pennsylvania Avenue, NW.  
Washington, DC 20460  
Attention: Docket ID No. OW-2005-0037

To Whom It May Concern:

We appreciate the opportunity to comment on the U. S. Environmental Protection Agency's "Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines for Concentrated Animal Feeding Operations in Response to *Waterkeeper* Decision" (Water Docket ID No. OW-2005-0037). This letter is a joint submission from the Missouri Departments of Natural Resources and Agriculture and the University of Missouri Commercial Agriculture Extension Program. These three agencies collaborate closely on issues related to agriculture and work with animal feeding operators in the state of Missouri. This letter addresses major issues while the attached document includes more comprehensive and detailed comments.

While we appreciate the challenges presented by the *Waterkeeper* Decision, a few areas in the proposed regulation need to be amended in order to allow states to properly and effectively protect water quality without placing an undo burden on operators of animal feeding operations (AFO's) and regulatory staff within the states. In addition, a number of issues need clarification before this regulation is finalized as parts of EPA's summary are internally inconsistent. The list below summarizes the main issues that we believe need to be addressed in the final rule.

1. Nutrient Management Plans (NMP's) - The proposed rule provides conflicting guidance on EPA's definition of a NMP.
2. Timeframe for Compliance - Currently, producers must have their permits and NMP's in place less than two months after EPA proposes to finalize this regulation according to information supplied to us by Region VII of EPA.
3. Agricultural Storm Water Exemption for Non-Permitted Facilities - At this time it is unclear whether Missouri can enforce the NMP requirements in the proposed rule on an unpermitted facility.
4. Accommodating NMP Changes - The approach reflected in EPA's template is not practical for producers or states in accommodating necessary changes in the NMP.
5. Economic Impact - The EPA's estimates of costs to producers and states appear to be low.

6. New Source Performance Standards - The proposed regulation's new source performance standards for swine, poultry and veal are fundamentally equivalent to the existing standards, but require significantly more effort to determine the design volume for a storage facility.

### **1. Nutrient Management Plans (NMP's)**

Nutrient management plans are strategic documents that define decision making tools and standards used to assess the suitability of a field for manure application and determine the rates and timing of applications. The proposed rule provides conflicting guidance on EPA's definition of a NMP.

In some places EPA endorses a workable strategic definition that preserves the ability of the operation to accommodate changing environmental conditions within the terms of its permit. In other places the proposal suggests that routine changes in methods of application and rates of application could be viewed as changing the terms of the NMP and permit. The example template provided in the proposed rule embraces an unworkable definition of a nutrient management plan. EPA's approach presents significant implementation and regulatory issues for the producers as well as the implementing state agencies without a corresponding environmental or economic benefit over alternatives.

We strongly recommend that EPA refrain from publishing a NMP template and other guidance that micromanages the structure or content of NMP's. The 2006 revised rule could make NMP's and associated record keeping on all animal feeding operations regulatory documents. Failure of EPA to embrace the strategic nature of an NMP could fundamentally change the nature and intent of the nutrient management planning process weakening the ability of farmers and the implementing state agencies to protect water quality. We encourage EPA to leave the method of implementation of the NMP requirements to states where local knowledge and technical expertise lie.

### **2. Timeframe for Compliance**

EPA has significantly shortened the period between the time that the proposed regulation will become final and the date that producers must have new permits in place. Currently, producers must have their NMP's in place less than two months after EPA proposes to finalize this regulation according to information supplied to us by Region VII of EPA.

A cursory examination of the way that states develop regulations shows the unreasonableness of the July 2007 deadline. Final state regulations and corresponding guidance to producers cannot precede the federal decision because the main changes needed in Missouri affect those items left uncertain in this proposed regulation. After EPA finalizes the regulations, state-level changes will have to be put on public notice and be approved by the Missouri Clean Water Commission. Only after these statewide regulations have been approved will permit holders and new applicants know what is expected and be able to complete their permit applications.

### **3. Agricultural Storm Water Exemption for Non-Permitted Facilities**

EPA proposes that an operator of an AFO must have a NMP in place and maintain proof of adherence to that plan in order to claim coverage under the agricultural storm water exemption. One question not addressed by EPA in its overview of the proposed regulation is whether EPA can place such a requirement on a non-permitted entity.

Permitting is the means by which the Missouri Department of Natural Resources has the authority to monitor CAFO operations and to enforce conditions on those operations. At this time it is unclear whether Missouri can enforce the NMP requirements in the proposed rule on an unpermitted facility.

### **4. Accommodating NMP changes**

Missouri is appreciative of the EPA's willingness to provide states and producers flexibility in changing Nutrient Management Plans (NMP) without requiring full public review of all changes. Such an approach is critical to water protection in a state where weather is highly variable and many of these farms land apply nutrients to land not under their direct ownership. These factors require operators to adjust their operations and land application plans to account for changes in climate and crop nutrient needs. If nutrient management plans are seen as strategic documents rather than prescriptive ones, the great majority of changes will be accommodated within such a plan. The approach reflected in EPA's template is not practical for producers or states in accommodating necessary changes in the NMP.

One challenge that we face on a regular basis is the change in ownership of fields used for land application and the impact of those changes on CAFO operations. Missouri strongly suggests that the EPA consider the addition of new fields for land application to the list of "non-substantial" changes, if manure or litter will be applied to those fields in a manner consistent with the NMP terms already in place. Such an approach will allow producers in this state to act in a manner protective of water quality with changes in application land ownership and weather conditions.

Public notification to implement or change a NMP is the primary difference between implementation of a NMP on a permitted operation and an unpermitted operation. An operation that fully implements an NMP will have met most permitting requirements except the public comment provisions. Adoption of workable standards for public comment on a strategic NMP is the key to encouraging more operations to voluntarily obtain a permit, an activity we endorse.

### **5. Economic Impact**

EPA estimates in the proposed rule that the direct economic impact to producers will be approximately \$43.4 MM. Based upon the number of CAFO's Missouri currently has under permit and the number of CAFO's indicated in Table 1 of the proposed rule, Missouri's portion of the economic burden will be approximately \$1.5 MM. The EPA's estimates of costs to producers appear to be low. NRCS estimates the cost of preparing a five-year NMP to be \$25/acre. This value was derived from experience and thus provides a good basis for calculating likely costs of writing NMP's. Given that the approximate number of spreading acres covered by permits in Missouri is 100,000 a more appropriate cost to Missouri producers would be \$2.5 MM. We

believe that the economic impact of the rule on producers could be great and must be better defined by EPA in this rulemaking.

If EPA requires all AFO operators to create NMP's in order to qualify for the agricultural stormwater exemption, the costs realized by producers under this regulation are significantly higher than indicated. EPA should closely examine the impacts of NMP requirements for non-permitted facilities on regulatory agencies. This provision of the proposed regulation will place a significant additional workload on regulatory agencies by requiring extensive paperwork reviews in response to alleged violations of NMPs by unpermitted facilities.

Regarding implementing state authority's economic impact, EPA estimates from Table 1 of the proposed rule that the burden to implementing states will be approximately \$26.4 MM. Missouri's share based upon the number of CAFOs in Missouri is approximately \$0.7 MM. We believe this number to be low as well in the sense that the rule does not likely take into account the costs associated with compliance with the NMP requirements for non-permitted facilities that are required to comply with EPA's interpretation of the agricultural storm water exemption. We believe EPA must further define this impact as most if not all of the cost of implementation of this proposal will likely be passed on to the regulated entities. Due to the magnitude of this rulemaking, EPA should consider additional state funding to support the work mandated by the rules.

## **6. New Source Performance Standards**

The proposed regulation's new source performance standards for swine, poultry and veal are fundamentally equivalent to the existing standards, but require significantly more effort to determine the design volume for a storage facility. The proposed regulation states that a producer can not use a design storm event to determine a zero discharge standard, but a producer can derive a zero discharge standard from a model that uses precipitation data as its critical input.

The very fact that the model is derived from precipitation records makes it the equivalent in everything but name to a design storm requirement. The end result will still produce a design storm event, but now EPA has removed any certainty from the standard. The main difference of this proposal is that producers will have to invest time and money in searching for the data to derive the standard that should apply at their particular site and get greater uncertainty in return.

The model approach creates a significant challenge to designers of open containment structure. With the lack of a design storm event and the requirement of zero discharge, many professional engineers will likely be reluctant to sign off on these structures. This will in effect create a de facto ban on open containment structures such as lagoons.

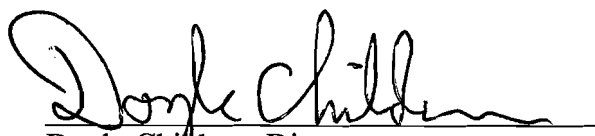
We recommend the prescribed computer program and model be abandoned to avoid future regulatory changes when newer, more applicable programs become available. We also recommend that EPA adopt the 100-year, 24-hour design standard for new source swine, poultry and veal operations. This standard has proven to be protective in Missouri when combined with best management practices.

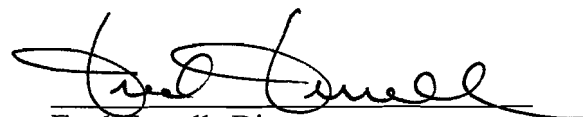
Together the EPA proposals on these topics create serious concerns about the ability of producers and state regulatory programs to function efficiently. Many of these proposals will interact with one another increasing the likelihood for major challenges at both the producer and state agency levels.


EPA should view each nutrient management plan as a strategic document that defines the processes through which each producer will use manure or litter and protect water quality. We strongly urge EPA to consider a more gradual and phased approach to NMP implementation that will allow producers and state regulatory agencies to meet the requirements of the regulation.

Thank you for the opportunity to offer comments on the proposed regulation. We anticipate working closely with EPA to implement the final rule. Should you have any questions concerning these comments, please contact Joe Engeln, Missouri Department of Natural Resources ((573) 751-9813, [joe.engeln@dnr.mo.gov](mailto:joe.engeln@dnr.mo.gov)).

Sincerely,

  
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Enclosure

- c. Governor Matt Blunt (w/o Enclosure)
- Senator Christopher Bond (w/o Enclosure)
- Senator Jim Talent (w/o Enclosure)
- Congressman William Lacy Clay (w/o Enclosure)
- Congressman W. Todd Akin (w/o Enclosure)
- Congressman Russ Carnahan (w/o Enclosure)
- Congressman Ike Skelton (w/o Enclosure)
- Congressman Emanuel Cleaver (w/o Enclosure)
- Congressman Sam Graves (w/o Enclosure)
- Congressman Roy Blunt (w/o Enclosure)
- Congresswoman Jo Ann Emerson (w/o Enclosure)
- Congressman Kenny Hulshof (w/o Enclosure)
- Roger Hansen, State Conservationist, Natural Resources Conservation Service  
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