

FIRST REGULAR SESSION

# SENATE BILL NO. 187

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATORS CAUTHORN AND CLEMENS.

Read 1st time January 18, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, and 644.016, RSMo, and to enact in lieu thereof ten new sections relating to concentrated animal feeding operations.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, and 644.016, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.745, 640.750, 640.755, and 644.016, to read as follows:

640.703. For the purposes of sections [640.700] **640.703** to 640.755, the following terms mean:

(1) ["Animal units", shall be defined by rules of the department in effect as of January 30, 1996;

(2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump stations, recycle force mains and appurtenances] **"Animal feeding operation" or "AFO", a lot or facility, other than an aquatic animal production facility, where the following conditions are met:**

(a) **Animals, other than aquatic animals, are, have been, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and**

(b) **Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;**

(2) **"Class I", the same meaning as a large concentrated animal**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

**feeding operation as such term is defined in 40 CFR 122.23(b)(4) as of April 14, 2003;**

(3) "Class IA", any concentrated animal feeding operation with a capacity of [seven thousand animal units or more] **at least seven times the number of animals as defined in subdivision (2) of this section;**

(4) "Class IB", any concentrated animal feeding operation with a capacity [between three thousand animal units and six thousand nine hundred and ninety-nine animal units inclusive] **of at least three times but less than seven times the number of animals as defined in subdivision (2) of this section;**

(5) "Class IC", any concentrated animal feeding operation with a capacity [between one thousand animal units and two thousand nine hundred and ninety-nine animal units inclusive] **of at least one but less than three times the number of animals as defined in subdivision (2) of this section;**

(6) "Class II", [any] **the same meaning as a medium concentrated animal feeding operation [with a capacity of at least three hundred animal units, but less than one thousand animal units] as such term is defined in 40 CFR 122.23(b)(6) as of April 14, 2003;**

(7) **"Concentrated animal feeding operation" or "CAFO", an AFO that is defined as a class I CAFO or a class II CAFO, or that is designated as a CAFO in accordance with subsection 2 of section 640.710. Two or more AFOs under common ownership shall be considered a single AFO for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes;**

(8) "Department", the department of natural resources;

[(8) "Facility", any class IA concentrated animal feeding operation which uses a flush system;]

(9) "Flush system", [a] **an automated system of moving or removing manure utilizing liquid as the primary agent as opposed to a primarily mechanical or [automatic device] manually operated system such as a pull plug or scraper system;**

(10) "Sensitive areas", areas in the watershed located within five miles upstream of any stream or river drinking water intake structure, other than those intake structures on the Missouri and Mississippi rivers.

640.710. 1. The [department] **clean water commission** shall

promulgate rules regulating the establishment, permitting, design, construction, operation and management of [class I facilities. The department shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation and management of any class I facility] **concentrated animal feeding operations in accordance with the Missouri clean water law, sections 644.066 to 644.141, RSMo.** Such rules may require monitoring wells on a site-specific basis when, in the determination of the division of [geology and land survey] **geological survey and resource assessment**, class IA concentrated animal feeding operation lagoons are located in hydrologically sensitive areas where the quality of groundwater may be compromised. Such rules and regulations shall be designed to afford a prudent degree of environmental protection while accommodating modern agricultural practices.

2. **The department may designate an AFO as a concentrated animal feeding operation upon determining that it is a significant contributor of pollutants to waters of the state.**

(1) **In making such designation, the department shall consider the following factors:**

(a) **The size of the AFO and the amount of wastes reaching waters of the state;**

(b) **The location of the AFO relative to waters of the state;**

(c) **The means of conveyance of animal wastes and process waste into waters of the state;**

(d) **The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste into waters of the state; and**

(e) **Other relevant factors.**

(2) **No AFO shall be designated under this section unless the department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated as a concentrated animal feeding operation. In addition, no AFO with numbers of animals below a class II concentrated animal feeding operation may be designated as a CAFO unless:**

(a) **Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or**

(b) **Pollutants are discharged directly into the waters of the state which originate outside of the facility and pass over, across, or through**

the facility, or otherwise come into direct contact with the animals confined in the operation.

3. Regulatory or local controls imposed at any time by any county, township, or other form of local government concerning the establishment, permitting, design, construction, operation, and management of any animal feeding operation shall be consistent with and not more restrictive than the provisions of sections 640.703 to 640.758.

4. Except as provided in subsections [3 and 4] 5 and 6 of this section, the department shall require at least but not more than the following buffer distances between the nearest confinement building or lagoon and any public building or occupied residence, except a residence which is owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained:

(1) For **class IC** concentrated animal feeding operations [with at least one thousand animal units], one thousand feet;

(2) For **class IB** concentrated animal feeding operations [with between three thousand and six thousand nine hundred ninety-nine animal units inclusive], two thousand feet; and

(3) For **class IA** concentrated animal feeding operations [of seven thousand or more animal units], three thousand feet.

[3.] 5. All concentrated animal feeding operations in existence as of June 25, 1996, shall be exempt from the buffer distances prescribed in subsection [2] 4 of this section. Such distances shall not apply to concentrated animal feeding operations which have received a written agreement which has been signed by all affected property owners within the buffer distance.

[4.] 6. The department may, upon review of the information contained in the site plan including, but not limited to, the prevailing winds, topography and other local environmental factors, authorize a distance which is less than the distance prescribed in subsection [2] 4 of this section. The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county governing body rejects the department's recommendation by a majority vote at the next meeting of the governing body after the recommendation is received.

[5. Nothing in this section shall be construed as restricting local controls.]

640.715. 1. Prior to filing an application to acquire a construction permit from the department **for a new operation, new lagoon, or for an increase of the capacity to house or grow animals at an existing operation**, the owner or operator of any class IA [, class IB, or class IC] concentrated animal feeding operation shall provide the following information to the department, to the county governing body and to all adjoining property owners of property located within one and one-half times the buffer distance as specified in subsection [2] 4 of section 640.710 for the size of the proposed facility:

- (1) The number of animals anticipated at such facility;
- (2) **A general description of the waste handling plan and [general] layout of the facility;**
- (3) The location and number of acres of such facility;
- (4) Name, address, **and** telephone number [and registered agent] **of a contact person** for further information as it relates to subdivisions (1) to (3) of this subsection;
- (5) Notice that the department will accept written comments from the public for a period of thirty days **after the department places the draft permit on public notice;** and
- (6) The address of the [regional or] state office of the department.

The department shall require proof of such notification [upon accepting] **prior to approving** an application for a construction permit. [The department shall accept written comments from the public for thirty days after receipt of application for construction permit.] **Proof of notification shall consist of a statement certifying that such notification was accomplished by mailing a letter to the department, county governing body, and the last known addresses as kept by the county assessor's office of all adjoining property owners described above.**

2. The department shall not issue a permit to [a facility] **the class of concentrated animal feeding operation** described in subsection 1 of this section to engage in any activity regulated by the department unless the applicant is in compliance with sections [640.700] **640.703** to 640.755.

3. The department shall issue a permit or respond with a letter of comment to the owner or operator of [such facility] **class IA concentrated animal feeding operation** within forty-five days of receiving a completed permit application and verification of compliance with subsection 1 of this section.

640.725. 1. The owner or operator of any [flush system animal waste wet

handling facility] **class IA facility that utilizes a flush system** shall employ one or more persons who shall visually inspect the [animal waste wet handling facility and] **gravity outfall lines, recycle pump stations, and recycle force mains appurtenant to its animal manure lagoons** for unauthorized [discharge and] **discharges and shall inspect the structural integrity of any lagoon whose water level is less than eighteen inches below the emergency spillway** at least every twelve hours with a deviation of not to exceed three hours. The owner or operator [of the facility] shall keep records of each inspection. Such records shall be retained for three years. The department shall provide or approve a form provided by the owner or operator [for each facility] for such inspections.

2. All new construction permits for [flush system animal waste wet handling facilities] **class IA facilities that utilize a flush system** shall have an electronic or mechanical shutoff of the system in the event of pipe stoppage. As of July 1, 1997, all existing [flush system animal waste wet handling facilities] **class IA facilities that utilize a flush system** shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow.

640.730. [1.] The owner or operator of every [facility, with a flush system animal waste wet handling facility] **class IA facility that utilizes a flush system** that poses a risk as determined by the department to any public drinking water supply or any aquatic life, or lies within a drainage basin and is within three hundred feet of any adjacent landowner, shall have a failsafe containment structure or earthen dam that will contain, in the event of an unauthorized discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four hour period from all gravity outfall lines, recycle pump station, and recycle force mains.

[2. Construction of such structure or dam, as provided in subsection 1 of this section, shall commence within ninety days of June 25, 1996.]

640.735. Within twenty-four hours, any unauthorized discharge by a [flush system animal waste wet handling facility] **class IA concentrated animal feeding operation that utilizes a flush system** that has crossed the property line of the [facility or any unauthorized discharge by a flush system animal waste wet handling facility of which the failsafe containment structure or earthen dam has failed to contain and has crossed the property line of the facility,] **operation** or enters waters of the state shall be reported to the department and to all

adjoining property owners of the facility [as listed on the site-specific permit] **onto whose property the unauthorized discharge flowed and any affected downstream property owners within one stream mile.**

640.745. 1. The owner or operator of each class IA concentrated animal feeding operation utilizing flush systems shall remit to the department of natural resources a fee [of ten cents per animal unit permitted] **in dollars determined by multiplying one hundred times the number of animals permitted, divided by the corresponding animal number as defined in 40 CFR 122.23(b)(4) as of April 14, 2003,** to be deposited in the fund. The fee is due and payable to the department on the first anniversary of issuance of each owner or operator permit to operate such a facility and for nine years thereafter on the same date. The department of natural resources shall provide forms which such owner or operator shall use to file and pay this fee.

2. The fund shall be administered by the department for the purpose of carrying out the provisions of sections [640.700] **640.703** to 640.755, relating to closure of class IA, class IB, class IC and class II concentrated animal feeding operation wastewater lagoons.

3. The fund administrators may only expend moneys for animal waste lagoon closure activities on real property which:

(1) 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 pose a threat to human health, the environment, or a threat to groundwater; and

(2) The state, county, or municipal government, or an agency thereof, has made reasonable and prudent efforts to sell said property to a qualifying purchaser.

4. The fund administrators shall expend no more than one hundred thousand dollars per lagoon for animal waste lagoon closure activities. The fund administrators shall only expend those moneys necessary to achieve a minimum level of closure and still protect human health and the environment. Closure activities shall include lagoon dewatering and removal of animal waste sludge, if any, both of which shall be land applied at a nutrient management application rate [based on the most limiting nutrient as determined by Missouri clean water commission regulation] **designed to minimize phosphorus and nitrogen transport from fields to surface waters in compliance with the technical**

**standards for nutrient management established by the Natural Resources Conservation Service, or otherwise used or disposed of in a manner approved by the director.** After dewatering, lagoons which are located in a drainage basin and are capable of meeting all applicable pond requirements of the Natural Resources Conservation Service (NRCS) with minimal additional expense should be maintained as a pond. Otherwise, the lagoon berms should be breached and graded in such a manner to reasonably conform to the surrounding land contours.

640.750. The department shall conduct [at least one on-site inspection] **quarterly inspections** of each [facility quarterly] **class IA concentrated animal feeding operation that utilizes a flush system.**

640.755. 1. No rule or portion of a rule promulgated under the authority of sections [640.700] **640.703** to 640.755 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

2. Sections [640.700] **640.703** to 640.755 shall be administered by the clean water commission pursuant to the provisions and requirements of chapter 644, RSMo.

644.016. When used in sections 644.006 to 644.141 and in standards, rules and regulations promulgated pursuant to sections 644.006 to 644.141, the following words and phrases mean:

(1) "Aquaculture facility", a hatchery, fish farm, or other facility used for the production of aquatic animals that is required to have a permit pursuant to the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) "Commission", the clean water commission of the state of Missouri created in section 644.021;

(3) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

(4) "Department", the department of natural resources;

(5) "Director", the director of the department of natural resources;

(6) "Discharge", the causing or permitting of one or more water



contaminants to enter the waters of the state;

(7) "Effluent control regulations", limitations on the discharge of water contaminants;

(8) "General permit", a permit written with a standard group of conditions and with applicability intended for a designated category of water contaminant sources that have the same or similar operations, discharges and geographical locations, and that require the same or similar monitoring, and that would be more appropriately controlled pursuant to a general permit rather than pursuant to a site-specific permit;

(9) "Human sewage", human excreta and wastewater, including bath and toilet waste, residential laundry waste, residential kitchen waste, and other similar waste from household or establishment appurtenances;

(10) "Income" includes retirement benefits, consultant fees, and stock dividends;

(11) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;

(12) "Permit by rule", a permit granted by rule, not by a paper certificate, and conditioned by the permit holder's compliance with commission rules;

(13) "Permit holders or applicants for a permit" shall not include officials or employees who work full time for any department or agency of the state of Missouri;

(14) "Person", any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(15) "Point source", any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. **Point source does not include agricultural stormwater discharges and return flows from irrigated agriculture;**

(16) "Pollution", such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in

temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life;

(17) "Pretreatment regulations", limitations on the introduction of pollutants or water contaminants into publicly owned treatment works or facilities which the commission determines are not susceptible to treatment by such works or facilities or which would interfere with their operation, except that wastes as determined compatible for treatment pursuant to any federal water pollution control act or guidelines shall be limited or treated pursuant to this chapter only as required by such act or guidelines;

(18) "Residential housing development", any land which is divided or proposed to be divided into three or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan for residential housing;

(19) "Sewer system", pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or handling;

(20) "Significant portion of his or her income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age, and is receiving such portion pursuant to retirement, pension, or similar arrangement;

(21) "Site-specific permit", a permit written for discharges emitted from a single water contaminant source and containing specific conditions, monitoring requirements and effluent limits to control such discharges;

(22) "Treatment facilities", any method, process, or equipment which removes, reduces, or renders less obnoxious water contaminants released from any source;

(23) "Water contaminant", any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of

the standards, regulations or limitations set forth in sections 644.006 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act;

(24) "Water contaminant source", the point or points of discharge from a single tract of property on which is located any installation, operation or condition which includes any point source defined in sections 644.006 to 644.141 and nonpoint source pursuant to any federal water pollution control act, which causes or permits a water contaminant therefrom to enter waters of the state either directly or indirectly. **Water contaminant source does not include agricultural stormwater discharges and return flows from irrigated agriculture;**

(25) "Water quality standards", specified concentrations and durations of water contaminants which reflect the relationship of the intensity and composition of water contaminants to potential undesirable effects;

(26) "Waters of the state", all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

[640.700. Sections 640.700, 640.725, 640.730, 640.735 and 640.750 shall only apply to class IA facilities as defined by the department rules in effect as of January 30, 1996, which use a flush system.]

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