

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1177

92ND GENERAL ASSEMBLY

Reported from the Committee on Agriculture, January 29, 2004, with recommendation that the House Committee Substitute for House Bill No. 1177 Do Pass.

Taken up for Perfection February 4, 2004. House Committee Substitute for House Bill No. 1177 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

3783L.03P

AN ACT

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

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A. Sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 2 640.745, 640.750, and 644.016, RSMo, are repealed and nine new sections enacted in lieu 3 thereof, to be known as sections 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 4 640.745, 640.750, and 644.016, to read as follows:

640.703. For the purposes of sections [640.700] **640.703** to 640.755, the following terms 2 mean:

3 (1) ["Animal units", shall be defined by rules of the department in effect as of January 4 30, 1996;

5 (2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle pump 6 stations, recycle force mains and appurtenances] "**Animal feeding operation**" or "**AFO**", a lot 7 or facility, other than an aquatic animal production facility, where the following conditions 8 are met:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

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

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

14 **(2) "Class I", the same meaning as a large concentrated animal feeding operation**
15 **as such term is defined in 40 CFR 122.23(b)(4) as of April 14, 2003, except that the quantity**
16 **referring to chickens in 40 CFR 122.23(b)(4)(x) for the purposes of sections 640.703 to**
17 **640.758 shall be one hundred thousand;**

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

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

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

29 **(6) "Class II", [any] the same meaning as a medium concentrated animal feeding**
30 **operation [with a capacity of at least three hundred animal units, but less than one thousand**
31 **animal units] as such term is defined in 40 CFR 122.23(b)(6) as of April 14, 2003, except that**
32 **the quantity referring to chickens in 40 CFR 122.23(b)(6)(i)(J) for purposes of sections**
33 **640.703 to 640.758 shall be thirty thousand to ninety-nine thousand nine hundred ninety-**
34 **nine;**

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

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

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

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

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

640.710. 1. The [department] **clean water commission shall have the authority and**
2 **jurisdiction to regulate the establishment, permitting, design, construction, operation, and**
3 **management of any class I concentrated animal feeding operation. The clean water**
4 **commission** shall promulgate rules regulating the establishment, permitting, design,
5 construction, operation and management of [class I facilities. The department shall have the
6 authority and jurisdiction to regulate the establishment, permitting, design, construction,
7 operation and management of any class I facility] **class I concentrated animal feeding**
8 **operations.** Such rules may require monitoring wells on a site-specific basis when, in the
9 determination of the division of [geology and land survey] **geological survey and resource**
10 **assessment**, class IA concentrated animal feeding operation lagoons are located in hydrologically
11 sensitive areas where the quality of groundwater may be compromised. Such rules and
12 regulations shall be designed to afford a prudent degree of environmental protection while
13 accommodating modern agricultural practices.

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

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

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

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

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

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

25 (e) **Other relevant factors.**

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

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

33 (b) Pollutants are discharged directly into the waters of the state which originate
34 outside of the facility and pass over, across, or through the facility, or otherwise come into
35 direct contact with the animals confined in the operation.

36 3. Regulatory or local controls imposed at any time by any county, township, or
37 other form of local government concerning the establishment, permitting, design,
38 construction, operation, and management of any animal feeding operation shall be
39 consistent with and not more restrictive than the provisions of sections 640.703 to 640.758.
40 Provided however, local governing bodies may impose controls more restrictive than the
41 provisions of sections 640.703 to 640.758 if prior to imposing more restrictive controls, the
42 local governing body shall seek and receive a recommendation from the respective soil and
43 water conservation district board. Such recommendation shall be based on peer-reviewed
44 scientific and economic data that clearly documents the geological, environmental, and
45 economic impact of the more restrictive controls. If no recommendation is received from
46 the respective soil and water conservation district board within one hundred eighty days,
47 the local governing body may impose the more restrictive controls.

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

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

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

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

59 [3.] 5. All concentrated animal feeding operations in existence as of June 25, 1996, shall
60 be exempt from the buffer distances prescribed in subsection [2] 4 of this section. Such
61 distances shall not apply to concentrated animal feeding operations which have received a written
62 agreement which has been signed by all affected property owners within the buffer distance.

63 [4.] 6. The department may, upon review of the information contained in the site plan
64 including, but not limited to, the prevailing winds, topography and other local environmental
65 factors, authorize a distance which is less than the distance prescribed in subsection [2] 4 of this
66 section. The department's recommendation shall be sent to the governing body of the county in

67 which such site is proposed. The department's authorized buffer distance shall become effective
68 unless the county governing body rejects the department's recommendation by a majority vote
69 at the next meeting of the governing body after the recommendation is received.

70 [5.] 7. 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
2 department **for a new facility, new lagoon, or for an increase of the capacity to house or**
3 **grow animals at an existing facility**, the owner or operator of any class IA[, class IB, or class
4 IC] concentrated animal feeding operation shall provide the following information to the
5 department, to the county governing body and to all adjoining property owners of property
6 located within one and one-half times the buffer distance as specified in subsection [2] 4 of
7 section 640.710 for the size of the proposed facility:

8 (1) The number of animals anticipated at such facility;

9 (2) **A general description of the waste handling plan and [general] layout of the facility;**

10 (3) The location and number of acres of such facility;

11 (4) Name, address, **and** telephone number [and registered agent] **of a contact person**
12 for further information as it relates to subdivisions (1) to (3) of this subsection;

13 (5) Notice that the department will accept written comments from the public for a period
14 of thirty days **after the department places the draft permit on public notice;** and

15 (6) The address of the [regional or] state office of the department.

16

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

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

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

640.725. 1. The owner or operator of any [flush system animal waste wet handling
2 facility] **class IA facility that utilizes a flush system** shall employ one or more persons who
3 shall visually inspect the [animal waste wet handling facility and] **gravity outfall lines, recycle**

4 **pump stations, and recycle force mains appurtenant to its animal manure** lagoons for
5 unauthorized [discharge and] **discharges and shall inspect the structural integrity of any lagoon**
6 **whose water level is less than eighteen inches below the emergency spillway** at least every
7 twelve hours with a deviation of not to exceed three hours. The owner or operator [of the
8 facility] shall keep records of each inspection. Such records shall be retained for three years.
9 The department shall provide or approve a form provided by the owner or operator [for each
10 facility] for such inspections.

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

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

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

640.735. Within twenty-four hours, any unauthorized discharge by a [flush system
2 animal waste wet handling facility] **class IA concentrated animal feeding operation** that has
3 crossed the property line of the facility or any unauthorized discharge by a [flush system animal
4 waste wet handling facility] **class IA concentrated animal feeding operation that utilizes a**
5 **flush system** of which the failsafe containment structure or earthen dam has failed to contain and
6 has crossed the property line of the facility, or enters waters of the state shall be reported to the
7 department and to all adjoining property owners of the facility [as listed on the site-specific
8 permit] **onto whose property the unauthorized discharge flowed and any affected**
9 **downstream property owners within one stream mile.**

640.745. 1. The owner or operator of each class IA concentrated animal feeding
2 operation utilizing flush systems shall remit to the department of natural resources a fee [of ten
3 cents per animal unit permitted] **in dollars determined by multiplying one hundred times the**
4 **number of animals permitted, divided by the corresponding animal number as defined in**
5 **40 CFR 122.23(b)(4) as of April 14, 2003,** to be deposited in the fund. The fee is due and

6 payable to the department on the first anniversary of issuance of each owner or operator permit
7 to operate such a facility and for nine years thereafter on the same date. The department of
8 natural resources shall provide forms which such owner or operator shall use to file and pay this
9 fee.

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

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

15 (1) Has been placed in the control of the state, a county, or municipal government, or an
16 agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement,
17 including conveyance by deed in lieu of foreclosure, and pose a threat to human health, the
18 environment, or a threat to groundwater; and

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

21 4. The fund administrators shall expend no more than one hundred thousand dollars per
22 lagoon for animal waste lagoon closure activities. The fund administrators shall only expend
23 those moneys necessary to achieve a minimum level of closure and still protect human health and
24 the environment. Closure activities shall include lagoon dewatering and removal of animal
25 waste sludge, if any, both of which shall be land applied at a nutrient management application
26 rate [based on the most limiting nutrient as determined by Missouri clean water commission
27 regulation] **designed to minimize phosphorus and nitrogen transport from fields to surface**
28 **waters in compliance with the technical standards for nutrient management established**
29 **by the Natural Resources Conservation Service and approved by the director, or otherwise**
30 **used or disposed of in a manner approved by the director.** After dewatering, lagoons which
31 are located in a drainage basin and are capable of meeting all applicable pond requirements of
32 the Natural Resources Conservation Service (NRCS) with minimal additional expense should
33 be maintained as a pond. Otherwise, the lagoon berms should be breached and graded in such
34 a manner to reasonably conform to the surrounding land contours.

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

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

- 4 (1) "Aquaculture facility", a hatchery, fish farm, or other facility used for the production
5 of aquatic animals that is required to have a permit pursuant to the federal Clean Water Act, as
6 amended, 33 U.S.C. 1251 et seq.;
- 7 (2) "Commission", the clean water commission of the state of Missouri created in section
8 644.021;
- 9 (3) "Conference, conciliation and persuasion", a process of verbal or written
10 communications consisting of meetings, reports, correspondence or telephone conferences
11 between authorized representatives of the department and the alleged violator. The process shall,
12 at a minimum, consist of one offer to meet with the alleged violator tendered by the department.
13 During any such meeting, the department and the alleged violator shall negotiate in good faith
14 to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
- 15 (4) "Department", the department of natural resources;
- 16 (5) "Director", the director of the department of natural resources;
- 17 (6) "Discharge", the causing or permitting of one or more water contaminants to enter
18 the waters of the state. **A discharge shall not include an accidental or unintentional release**
19 **of water contaminants where the water contaminants are entirely confined upon lands**
20 **owned, leased, or otherwise controlled by a single person, or by two or more persons jointly**
21 **or as tenants in common, and where the released water contaminants are removed, cleaned**
22 **up, or remediated to the extent that any flow of water that leaves the property and enters**
23 **the waters of the state does not exceed any of the standards, regulations, or limitations set**
24 **forth in sections 644.006 to 644.141;**
- 25 (7) "Effluent control regulations", limitations on the discharge of water contaminants;
- 26 (8) "General permit", a permit written with a standard group of conditions and with
27 applicability intended for a designated category of water contaminant sources that have the same
28 or similar operations, discharges and geographical locations, and that require the same or similar
29 monitoring, and that would be more appropriately controlled pursuant to a general permit rather
30 than pursuant to a site-specific permit;
- 31 (9) "Human sewage", human excreta and wastewater, including bath and toilet waste,
32 residential laundry waste, residential kitchen waste, and other similar waste from household or
33 establishment appurtenances;
- 34 (10) "Income" includes retirement benefits, consultant fees, and stock dividends;
- 35 (11) "Minor violation", a violation which possesses a small potential to harm the
36 environment or human health or cause pollution, was not knowingly committed, and is not
37 defined by the United States Environmental Protection Agency as other than minor;
- 38 (12) "Permit by rule", a permit granted by rule, not by a paper certificate, and
39 conditioned by the permit holder's compliance with commission rules;

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

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

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

51 (16) "Pollution", such contamination or other alteration of the physical, chemical or
52 biological properties of any waters of the state, including change in temperature, taste, color,
53 turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or
54 other substance into any waters of the state as will or is reasonably certain to create a nuisance
55 or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to
56 domestic, industrial, agricultural, recreational, or other legitimate beneficial uses, or to wild
57 animals, birds, fish or other aquatic life;

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

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

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

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

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

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

79 (23) "Water contaminant", any particulate matter or solid matter or liquid or any gas or
80 vapor or any combination thereof, or any temperature change which is in or enters any waters of
81 the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or
82 otherwise, which causes or would cause pollution upon entering waters of the state, or which
83 violates or exceeds any of the standards, regulations or limitations set forth in sections 644.006
84 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant
85 in such federal act;

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

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

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

2 [640.700. Sections 640.700, 640.725, 640.730, 640.735 and
3 640.750 shall only apply to class IA facilities as defined by the
4 department rules in effect as of January 30, 1996, which use a flush
system.]