

RECOMMENDATION TO LEGISLATIVE COUNCIL

by the

**COMMITTEE FOR THE STUDY OF
CONCENTRATED ANIMAL FEEDING OPERATION
PROCEDURES**

Members

**Ryan Benefield, Chair
Prof. Eric Wailes
Gene Pharr
Jeff Marley
Ross Noland**

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Scope

2013 Ark. Acts 1511 authorizes this committee to “develop a policy concerning the procedure for an applicant to give sufficient notice of a Notice of Intent of application under a general permit for Concentrated Animal Feeding Operations.” This Recommendation to Legislative Council (“recommendation”) is the product of the Committee for the Study of Concentrated Animal Feeding Operation Procedures (“committee”) created by 2013 Ark. Acts 1511.

The recommendations contained herein are restricted to notice given by the “applicant,” as opposed to the Arkansas Department of Environmental Quality (“ADEQ”), as required by the enabling legislation. The committee agreed that it would consider the cost of providing a form of notice versus the effectiveness of that form reaching the public.

CAFO General Permit Background

Arkansas’ Concentrated Animal Feeding Operation (“CAFO”) general permit became effective November 1, 2011.¹ The general permit is available as an alternative to facilities required to obtain a site-specific, state only, no-discharge animal feeding operation permit pursuant to Arkansas Pollution Control and Ecology (“APCEC”) Regulation 5. A general permit is a statewide permit for a category of facilities or sources that: involve the same type of wastes or engage in the same type of disposal practices; require the same limitations, operating conditions, or standards; and require the same or similar monitoring requirements. The CAFO general permit is available to any animal agriculture operation. ADEQ’s summary of the number and type of animals needed to qualify as a CAFO is found online² and in the permit.

Part 5 of the CAFO general permit sets forth the current requirements for public notice. This part requires the ADEQ to first determine the sufficiency of a potential permittee’s Notice of Intent (“NOI”) for coverage under the general permit, and the Nutrient Management Plan (“NMP”) required by the CAFO general permit. If ADEQ finds the NOI and NMP to comply with the CAFO general permit, it then makes the documents available on its website for public comment for 30 days. Additionally, 2013 Ark. Acts 1511 requires the applicant to publish notice of the NOI twice a week for six weeks in both a statewide and local newspaper. This requirement is temporary legislation which will expire.

Stakeholder Input

This committee actively sought stakeholder input from producers, animal agriculture trade associations, integrators, sustainable agriculture groups, and conservation and environmental organizations. The committee also received public comment at its meetings on November 18, 2013, and December 20, 2013. The suggestions and ideas received are summarized as follows:

¹ General Permit No. ARG59000, ADEQ, last accessed December 4, 2013, <http://www.adeq.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/Permits/ARG590000.pdf>

² Table of Regulatory Definitions of CAFOs, ADEQ, last accessed December 4, 2013, http://www.adeq.state.ar.us/ftproot/Pub/WebDatabases/PermitsOnline/NPDES/PermitInformation/ARG590000_CAFO%20definitions%20and%20sizes_20110830.pdf.

Agriculture Community

1. Cost is a concern with any new regulatory requirement.
2. Producers need to operate their farms efficiently to be successful and profitable.
3. Generally agree that notice to adjoining landowners of CAFOs is appropriate.

Conservation Community

1. Notice to residents and landowners surrounding the proposed CAFO. Alternatives include adjoining landowners, or those within a one mile radius or greater.
2. Notice to residents and landowners adjoining land application sites.
3. Creation of an email list by ADEQ to disseminate notice which interested persons can easily join.
4. Notice to the host county's County Judge and Quorum Court, and notice to the closest municipality to the proposed CAFO.
5. Notice in state and local newspapers, as required by 2013 Ark. Acts 1511.
6. Notice to government agencies, such as the Arkansas Department of Health and Parks and Tourism, and state and federal agencies which manage public land potentially impacted by the proposed CAFO.
7. Notice to schools within one mile of the proposed CAFO.

Existing Notice Laws Considered

The Committee reviewed notice laws and rules administered by Arkansas agencies and CAFO general permit notice rules from other states. Pursuant to the law creating this committee, notice provisions which the applicant, not the ADEQ, can complete are considered here.

APCEC Reg. 18 is Arkansas' Air Pollution Control Code. APCEC Reg. 18.306 (B)(1) contains notice requirements similar to those suggested by stakeholders, including provisions (c) and (d):

A publication in a newspaper of general circulation in the area where the source is located or proposes to locate, and in a State publication designed to give general public notice. Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the Department's analysis of this information, may be inspected and the procedure for submitting public comment.

A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the: (i) mayor of the community where the stationary source is proposed to be constructed or modified; (ii) county judge of the county where the stationary source is proposed to be constructed or modified.

The Capitol Zoning District Commission (“CZDC”) administers a permit program for work in historic areas in Little Rock. CZDC require the applicant to, amongst other tasks, complete the following notice to adjacent property owners pursuant to CZDC Rule 2-105(F)(1)(c):

The applicant shall give not less than ten (10) calendar days written notice of the time, place and the date of the public hearing to all owners of record of property situated within 200 feet of the property for which the permit is requested. Staff may require an applicant to submit a list of surrounding property owners obtained from an abstract company. The notice shall be sent by certified mail to the last known address of such recorded owners(s). (The certified mail requirement may be waived by staff for applications for work on existing single-family and two-family structures.) The applicant shall file an affidavit showing compliance with these requirements. The affidavit shall have attached to it official evidence that states that the notices have been served as required

The Committee determined at its first meeting that a review of other, especially neighboring, state’s CAFO notice regulations would be helpful. ADEQ provided the Committee with a summary of notice regulations from every state. The Committee reviewed and considered several statutes and regulations at the second meeting, including, but not limited to:

- Oklahoma requires applicants to send notice of a new animal feeding operation “by certified mail, return receipt requested” to “all affected property owners.” Okla. Stat. tit. 2, § 20-46(C)(1). Such notice is to include the location of the facility, the possibility of a hearing, when the application will be available for public review, and any other information required by the state agency. *Id.* This state also requires the applicant to publish notice in “at least one newspaper of general circulation in the county where the proposed facility is to be located.” Okla. Stat. tit. 2, § 20-46(D)(2).
- A New Mexico applicant, in addition to neighboring landowner notification and publication in a newspaper, must post a 2 x3 foot sign at a place “conspicuous to the public” which contains a “synopsis of the public notice.” N.M. Code R. § 20.6.2.3108(B)(1).
- Missouri provides applicants with a “Guide to Animal Feeding Operations,” which states that the applicant is required to give notice of an application to adjoining property owners “within 1.5 times the listed buffer distance.”³
- Georgia requires notice to property owners within one mile of the border of the CAFO site, and publication in a local newspaper. Ga Comp. R. & Regs. § 391-3-6-.20(4)(e).

³ Missouri Department of Natural Resources, *Guide to Animal Feeding Operations*, last accessed January 14, 2014: <http://www.dnr.mo.gov/pubs/pub915.pdf>.

Recommendation

After considering the information discussed above, the Committee adopted the following recommendations at its December 20, 2013, meeting:

- The applicant shall provide written notice by letter, certified mail, return receipt requested, to the following people:
 - Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites.
 - The County Judge of the County where the CAFO production site and any manure spreading site is located.
 - Mayors of incorporated municipalities within ten miles of the CAFO production site.
 - The superintendent of the school district that serves the CAFO production site.
- It shall be the applicant's responsibility to retain return receipts.
- ADEQ will define the contents of the written public notice distributed by the applicant in a form letter made available to the applicant. However, that form letter shall contain, at a minimum, the following:
 - Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm.
 - An explanation of the 30 day public comment period and the right to comment.
 - The telephone number of a person to contact at ADEQ with questions.
 - Directions to the ADEQ's website, including directions regarding how an interested party may submit their name to receive electronic notification of notices of intent for coverage under the CAFO general permit.
 - All letters shall include the certified mail, return receipt number.
- The applicant shall publish notice one time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ shall proscribe the form of that notice, and determine the proper paper for publication.
- The applicant shall post a 2 x 3 foot sign on a public road nearest the entrance to the CAFO production site. ADEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which the ADEQ requires the applicant to publish in the paper. The sign shall be posted prior to submittal of an NOI and shall remain in place until 30 days following ADEQ approval of the NOI and NMP.

The Committee intends each requirement as a prerequisite to submitting a NOI to ADEQ. The applicant will certify compliance when submitting the NOI and NMP to ADEQ. The Committee reached these recommendations by consensus. The Committee did not reach consensus regarding a proposal to provide notice to the Superintendent of the Buffalo National River of CAFOs proposed in the Buffalo River's watershed. That motion failed 2-3.

Ancillary Issues

The Committee suggests that ADEQ publicize the availability of its listserves which provide notice of applications for coverage under general permits, including the CAFO general permit. Several commenters requested such a service, which the ADEQ already provides. Several commenters also suggested that the applicant provide notice to the Department of Health. ADEQ already provides notice to the Department of Health, so the Committee viewed applicant notice to the Department of Health as unnecessary duplicative.

Conclusion

The Committee believes the recommendations contained herein may be enacted either through a rulemaking process before the Arkansas Pollution Control and Ecology Commission, or through the legislature. The Committee thanks all those who provided input and comments during this process.