

FIRST REGULAR SESSION

# HOUSE BILL NO. 494

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES GUEST, DETHROW, SUTHERLAND, MYERS (Co-sponsors),  
HOBBS, KING, WHORTON, BLACK, BARNITZ AND SANDER.

Read 1<sup>st</sup> time February 18, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1279L.011

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### AN ACT

To repeal sections 640.700, 640.703, 640.710, 640.715, 640.725, 640.730, 640.735, 640.740, 640.745, 640.747, 640.750 and 640.755, RSMo, and to enact in lieu thereof twelve 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,  
2 640.740, 640.745, 640.747, 640.750 and 640.755, RSMo, are repealed and twelve new sections  
3 enacted in lieu thereof, to be known as sections 644.600, 644.603, 644.610, 644.617, 644.625,  
4 644.630, 644.635, 644.640, 644.645, 644.647, 644.650 and 644.655, to read as follows:

**644.600. Sections 644.600, 644.625, 644.630, 644.635 and 644.650 shall only apply**  
2 **to class IA facilities as defined by the department rules in effect as of January 30, 1996,**  
3 **which use a flush system.**

**644.603. For the purposes of sections 644.600 to 644.655, the following terms mean:**

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

4 **(2) "Animal waste wet handling facility", includes all gravity outfall lines, recycle**  
5 **pump stations, recycle force mains and appurtenances;**

6 **(3) "Class IA", any concentrated animal feeding operation with a capacity of seven**  
7 **thousand animal units or more;**

8 **(4) "Class IB", any concentrated animal feeding operation with a capacity between**  
9 **three thousand animal units and six thousand nine hundred and ninety-nine animal units**

**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 new proposed language.**

10 inclusive;

11 (5) "Class IC", any concentrated animal feeding operation with a capacity between  
12 one thousand animal units and two thousand nine hundred and ninety-nine animal units  
13 inclusive;

14 (6) "Class II", any concentrated animal feeding operation with a capacity of at least  
15 three hundred animal units, but less than one thousand animal units;

16 (7) "Department", the department of natural resources;

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

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

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

644.610. 1. The clean water commission shall promulgate rules regulating the  
2 establishment, permitting, design, construction, operation, and management of class I  
3 facilities. The department shall have the authority and jurisdiction to regulate the  
4 establishment, permitting, design, construction, operation, and management of any class  
5 I facility. Such rules may require monitoring wells on a site-specific basis when, in the  
6 determination of the division of geological survey and resource assessment, class IA  
7 concentrated animal feeding operation lagoons are located in hydrologically sensitive areas  
8 where the quality of groundwater may be compromised. Such rules and regulations shall  
9 be designed to afford a prudent degree of environmental protection while accommodating  
10 modern agricultural practices. Regulatory or local controls imposed by any county,  
11 township, or other form of local government concerning the establishment, permitting,  
12 design, construction, operation, and management of any class I or II concentrated animal  
13 feeding operation shall be consistent with the provisions of sections 644.600 to 644.655.  
14 Local governing bodies may impose controls stricter than those described in sections  
15 644.600 to 644.655 only if such controls are based on reasonably available empirical peer-  
16 reviewed scientific and economic data that clearly documents the need and cost  
17 effectiveness for the more restrictive provisions. Such data shall include an assessment of  
18 the effectiveness and the cost of the controls to the state and to any private or public person  
19 or entity affected by such local control. Prior to implementation, any stricter controls  
20 adopted by a local governing body shall be approved by the clean water commission and  
21 the department of health and senior services. Any challenge of local controls governing the

22 establishment, permitting, design, construction, operation, and management of any class  
23 I or II concentrated animal feeding operation, shall be filed in circuit court and the burden  
24 of proof shall be on the local governing body.

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

30       **(1) For concentrated animal feeding operations with at least one thousand animal**  
31 **units, one thousand feet;**

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

34       **(3) For concentrated animal feeding operations of seven thousand or more animal**  
35 **units, three thousand feet.**

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

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

49       **5. Nothing in this section shall be construed as restricting local controls.**

**644.617. Notwithstanding any other provision of law to the contrary, any**  
2 **corporation or cooperative engaged in farming, as defined in section 350.010, RSMo, shall**  
3 **not be eligible for any state tax credits, deductions, state grants, loans, or other financial**  
4 **or economic assistance, unless a family farm or a family farm corporation, as defined in**  
5 **section 350.010, RSMo, receives such credits, deductions, grants, loans, or other assistance.**  
6 **This section does not apply to agricultural processing or food processing facilities.**

**644.625. 1. The owner or operator of any class IA flush system animal waste wet**  
2 **handling facility shall employ one or more persons who shall visually inspect the animal**

3 waste wet handling facility for unauthorized discharge and structural integrity of any  
4 lagoon with a water level less than eighteen inches below the emergency spillway at least  
5 every twelve hours with a deviation of not to exceed three hours. The owner or operator  
6 of the facility shall keep records of each inspection. Such records shall be retained for  
7 three years. The department shall provide or approve a form provided by the owner or  
8 operator for each facility for such inspections.

9       2. All new construction permits for flush system animal waste wet handling  
10 facilities shall have an electronic or mechanical shutoff of the system in the event of pipe  
11 stoppage. As of July 1, 1997, all existing flush system animal waste wet handling facilities  
12 shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of  
13 pipe stoppage or backflow.

644.630. 1. The owner or operator of every facility, with a flush system animal  
2 waste wet handling facility that poses a risk as determined by the department to any public  
3 drinking water supply or any aquatic life, or lies within a drainage basin and is within  
4 three hundred feet of any adjacent landowner, shall have a failsafe containment structure  
5 or earthen dam that will contain, in the event of an unauthorized discharge, a minimum  
6 volume equal to the maximum capacity of flushing in any twenty-four hour period from  
7 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  
9 section, shall commence within ninety days of June 25, 1996.

644.635. Within twenty-four hours, any unauthorized discharge by a flush system  
2 animal waste wet handling facility that has crossed the property line of the facility or any  
3 unauthorized discharge by a flush system animal waste wet handling facility of which the  
4 failsafe containment structure or earthen dam has failed to contain and has crossed the  
5 property line of the facility, or enters waters of the state shall be reported to the  
6 department and to all adjoining property owners of the facility as listed on the site-specific  
7 permit.

644.640. There is hereby established in the state treasury the "Concentrated  
2 Animal Feeding Operation Indemnity Fund", to be known as the "fund" for the purposes  
3 of sections 644.640 to 644.647. All fees or other moneys payable pursuant to the provisions  
4 of section 644.645 or other moneys received including gifts, grants, appropriations, and  
5 bequests from federal, private or other sources made for the purpose of the provisions of  
6 this act shall be payable to and collected by the director of the department of natural  
7 resources and deposited in this fund. The money in this fund, upon appropriation, shall  
8 be expended to close class IA, class IB, class IC and class II concentrated animal feeding  
9 operations as defined in the department's rules, that have been placed in the control of the

10 government due to bankruptcy or failure to pay property taxes, or if the class IA, class IB,  
11 class IC or class II concentrated animal feeding operation is abandoned property.  
12 "Abandoned property", for the purposes of this section, means real property previously  
13 used for, or which has the potential to be used for, agricultural purposes which has been  
14 placed in the control of the state, a county, or municipal government, or an agency thereof,  
15 through donation, purchase, tax delinquency, foreclosure, default or settlement, including  
16 conveyance by deed in lieu of foreclosure, and has been vacant for a period of not less than  
17 three years. Any portion of the fund not immediately needed for the purposes authorized  
18 shall be invested by the state treasurer as provided by the constitution and laws of this  
19 state. All income from such investments shall be deposited in the fund. Any unexpended  
20 balance in the fund at the end of any appropriation period shall not be transferred to the  
21 general revenue fund and, accordingly, shall be exempt from the provisions of section  
22 33.080, RSMo, relating to the transfer of funds to the general revenue funds of the state by  
23 the state treasurer.

644.645. 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  
3 of ten cents per animal unit permitted to be deposited in the fund. The fee is due and  
4 payable to the department on the first anniversary of issuance of each owner or operator  
5 permit to operate such a facility and for nine years thereafter on the same date. The  
6 department of natural resources shall provide forms which such owner or operator shall  
7 use to file and pay this fee.

8 2. The fund shall be administered by the department for the purpose of carrying  
9 out the provisions of sections 644.600 to 644.655, relating to closure of class IA, class IB,  
10 class IC and class II concentrated animal feeding operation wastewater lagoons.

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

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

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

19 4. The fund administrators shall expend no more than one hundred thousand  
20 dollars per lagoon for animal waste lagoon closure activities. The fund administrators  
21 shall only expend those moneys necessary to achieve a minimum level of closure and still  
22 protect human health and the environment. Closure activities shall include lagoon

23 dewatering and removal of animal waste sludge, if any, both of which shall be land applied  
24 at a nutrient management application rate designed to minimize phosphorus and nitrogen  
25 transport from fields to surface waters in compliance with the technical standards for  
26 nutrient management established by the director or otherwise used or disposed of in a  
27 manner approved by the director. After dewatering, lagoons which are located in a  
28 drainage basin and are capable of meeting all applicable pond requirements of the Natural  
29 Resources Conservation Service (NRCS) with minimal additional expense should be  
30 maintained as a pond. Otherwise, the lagoon berms should be breached and graded in  
31 such a manner to reasonably conform to the surrounding land contours.

2 **644.647.** In the event the department determines that a class IA, class IB, class IC  
3 or class II concentrated animal feeding operation has been successfully closed by the owner  
4 or operator, all moneys paid by such operation into the concentrated animal feeding  
5 operation indemnity fund shall be returned to such operation.

2 **644.650.** The department shall conduct at least one on-site inspection of each  
3 facility quarterly.

2 **644.655. 1.** No rule or portion of a rule promulgated under the authority of sections  
3 644.600 to 644.655 shall become effective unless it has been promulgated pursuant to the  
4 provisions of chapter 536, RSMo.

5 **2.** Sections 644.600 to 644.655 shall be administered by the clean water commission  
6 pursuant to the provisions and requirements of this chapter.

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

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

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

5 (2) "Animal waste wet handling facility", includes all gravity outfall lines,  
6 recycle pump stations, recycle force mains and appurtenances;

7 (3) "Class IA", any concentrated animal feeding operation with a capacity of  
8 seven thousand animal units or more;

9 (4) "Class IB", any concentrated animal feeding operation with a capacity  
10 between three thousand animal units and six thousand nine hundred and ninety-nine  
11 animal units inclusive;

12 (5) "Class IC", any concentrated animal feeding operation with a capacity  
13 between one thousand animal units and two thousand nine hundred and ninety-nine  
14 animal units inclusive;

15 (6) "Class II", any concentrated animal feeding operation with a capacity of  
16 at least three hundred animal units, but less than one thousand animal units;

- 17 (7) "Department", the department of natural resources;  
18 (8) "Facility", any class IA concentrated animal feeding operation which uses  
19 a flush system;  
20 (9) "Flush system", a system of moving or removing manure utilizing liquid  
21 as the primary agent as opposed to a primarily mechanical or automatic device;  
22 (10) "Sensitive areas", areas in the watershed located within five miles  
23 upstream of any stream or river drinking water intake structure, other than those  
24 intake structures on the Missouri and Mississippi rivers.]

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

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

16 (1) For concentrated animal feeding operations with at least one thousand  
17 animal units, one thousand feet;

18 (2) For concentrated animal feeding operations with between three thousand  
19 and six thousand nine hundred ninety-nine animal units inclusive, two thousand feet;  
20 and

21 (3) For concentrated animal feeding operations of seven thousand or more  
22 animal units, three thousand feet.

23 3. All concentrated animal feeding operations in existence as of June 25,  
24 1996, shall be exempt from the buffer distances prescribed in subsection 2 of this  
25 section. Such distances shall not apply to concentrated animal feeding operations  
26 which have received a written agreement which has been signed by all affected  
27 property owners within the buffer distance.

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

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

2 [640.715. 1. Prior to filing an application to acquire a construction permit  
3 from the department, the owner or operator of any class IA, class IB, or class IC  
4 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  
6 property located within one and one-half times the buffer distance as specified in  
7 subsection 2 of section 640.710 for the size of the proposed facility:

- 8 (1) The number of animals anticipated at such facility;  
9 (2) 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, telephone number and registered agent for further  
12 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  
14 for a period of thirty days; and  
15 (6) The address of the regional or state office of the department.

16 The department shall require proof of such notification upon accepting an application  
17 for a construction permit. The department shall accept written comments from the  
18 public for thirty days after receipt of application for construction permit.

19 2. The department shall not issue a permit to a facility described in  
20 subsection 1 of this section to engage in any activity regulated by the department  
21 unless the applicant is in compliance with sections 640.700 to 640.755.

22 3. The department shall issue a permit or respond with a letter of comment  
23 to the owner or operator of such facility within forty-five days of receiving a  
24 completed permit application and verification of compliance with subsection 1 of this  
25 section.]

2 [640.725. 1. The owner or operator of any flush system animal waste wet  
3 handling facility shall employ one or more persons who shall visually inspect the  
4 animal waste wet handling facility and lagoons for unauthorized discharge and  
5 structural integrity at least every twelve hours with a deviation of not to exceed three  
6 hours. The owner or operator of the facility shall keep records of each inspection.  
7 Such records shall be retained for three years. The department shall provide or  
8 approve a form provided by the owner or operator for each facility for such  
9 inspections.

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

2 [640.730. 1. The owner or operator of every facility, with a flush system  
3 animal waste wet handling facility that poses a risk as determined by the department  
4 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

5 containment structure or earthen dam that will contain, in the event of an  
6 unauthorized discharge, a minimum volume equal to the maximum capacity of  
7 flushing in any twenty-four hour period from all gravity outfall lines, recycle pump  
8 station and recycle force mains.

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

2 [640.735. Within twenty-four hours, any unauthorized discharge by a flush  
3 system animal waste wet handling facility that has crossed the property line of the  
4 facility or any unauthorized discharge by a flush system animal waste wet handling  
5 facility of which the failsafe containment structure or earthen dam has failed to  
6 contain and has crossed the property line of the facility, or enters waters of the state  
7 shall be reported to the department and to all adjoining property owners of the facility  
as listed on the site-specific permit.]

2 [640.740. There is hereby established in the state treasury the "Concentrated  
3 Animal Feeding Operation Indemnity Fund", to be known as the "fund" for the  
4 purposes of sections 640.740 to 640.747. All fees or other moneys payable pursuant  
5 to the provisions of section 640.745 or other moneys received including gifts, grants,  
6 appropriations, and bequests from federal, private or other sources made for the  
7 purpose of the provisions of this act shall be payable to and collected by the director  
8 of the department of natural resources and deposited in this fund. The money in this  
9 fund, upon appropriation, shall be expended to close class IA, class IB, class IC and  
10 class II concentrated animal feeding operations as defined in the department's rules,  
11 that have been placed in the control of the government due to bankruptcy or failure  
12 to pay property taxes, or if the class IA, class IB, class IC or class II concentrated  
13 animal feeding operation is abandoned property. "Abandoned property", for the  
14 purposes of this section, means real property previously used for, or which has the  
15 potential to be used for, agricultural purposes which has been placed in the control  
16 of the state, a county, or municipal government, or an agency thereof, through  
17 donation, purchase, tax delinquency, foreclosure, default or settlement, including  
18 conveyance by deed in lieu of foreclosure, and has been vacant for a period of not  
19 less than three years. Any portion of the fund not immediately needed for the  
20 purposes authorized shall be invested by the state treasurer as provided by the  
21 constitution and laws of this state. All income from such investments shall be  
22 deposited in the fund. Any unexpended balance in the fund at the end of any  
23 appropriation period shall not be transferred to the general revenue fund and,  
24 accordingly, shall be exempt from the provisions of section 33.080, RSMo, relating  
25 to the transfer of funds to the general revenue funds of the state by the state  
treasurer.]

2 [640.745. 1. The owner or operator of each class IA concentrated animal  
3 feeding operation utilizing flush systems shall remit to the department of natural  
4 resources a fee of ten cents per animal unit permitted to be deposited in the fund.  
5 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

6 on the same date. The department of natural resources shall provide forms which  
7 such owner or operator shall use to file and pay this fee.

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

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

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

19 (2) The state, county, or municipal government, or an agency thereof, has  
20 made 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  
22 dollars per lagoon for animal waste lagoon closure activities. The fund  
23 administrators shall only expend those moneys necessary to achieve a minimum level  
24 of closure and still protect human health and the environment. Closure activities  
25 shall include lagoon dewatering and removal of animal waste sludge, if any, both of  
26 which shall be land applied at a nutrient management application rate based on the  
27 most limiting nutrient as determined by Missouri clean water commission regulation.  
28 After dewatering, lagoons which are located in a drainage basin and are capable of  
29 meeting all applicable pond requirements of the Natural Resources Conservation  
30 Service (NRCS) with minimal additional expense should be maintained as a pond.  
31 Otherwise, the lagoon berms should be breached and graded in such a manner to  
32 reasonably conform to the surrounding land contours.]

2 [640.747. In the event the department determines that a class IA, class IB,  
3 class IC or class II concentrated animal feeding operation has been successfully  
4 closed by the owner or operator, all moneys paid by such operation into the  
5 concentrated animal feeding operation indemnity fund shall be returned to such  
operation.]

2 [640.750. The department shall conduct at least one on-site inspection of  
each facility quarterly.]

2 [640.755. 1. No rule or portion of a rule promulgated under the authority of  
3 sections 640.700 to 640.755 shall become effective unless it has been promulgated  
4 pursuant to the provisions of section 536.024, RSMo.

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