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Supporting community health and economic well-being through education and advocacy

**Missouri Department of Natural Resources**
**PUBLIC COMMENT**

To: Cindy LePage, Chief, Engineering Section, Missouri Department of Natural Resources
From: Susan Williams, President, Moniteau County Neighbors Alliance (MCNA), 660-888-3370
Date: August 23, 2024
Re: 10 CSR 20-8.200 *Wastewater Treatment Lagoons and Wastewater Irrigation Alternatives*

The Moniteau County Neighbors Alliance (MCNA) appreciates the opportunity to provide a public comment on the Missouri Department of Natural Resources' (DNR) proposed rule change to 10 CSR 20-8.200: Wastewater Treatment Lagoons and Wastewater Alternatives. MCNA is a 501(c)(3) non-profit Missouri corporation that supports community health and economic well-being through education and advocacy in Moniteau County, and all of Missouri. As groundwater is a major source of drinking water supply for both people and livestock animals, we are concerned about possible contamination in the public and private wells that cover the state. Groundwater contamination would have dire consequences for public and animal health.

**MCNA Comments, Questions, and Objections about Proposed Rule Changes (in blue)**
(see Missouri Register, Vol. 49, No. 14, July 15, 2024, page 1125)

**Proposed Amendment**
Need to clarify new title for 10 CSR 20-8.200
*Is it now "Wastewater Treatment Lagoons, Wastewater Irrigation Alternatives, and Earthen Basins."* This title is unwieldly and should be shortened for ease of use and understanding.

**Purpose**
The Missouri Register describes multiple purposes for the proposed amendment including

changes that are *administrative in nature, allows an engineer to propose an alternative design that is justified and is at least as effective as the requirements of this chapter, clarifies that additional geologic information may be submitted, and clarifies the applicability includes earthen basins.*

The underlined sentences represent those items MCNA objects to in the PURPOSE of the rule. They are located in 10 CSR 20-8.200 with the addition of 10 CSR 20-8.200(2) Alternative Design and with the addition of words in 10 CSR 20-8.200(3)(B) Geohydrologic Evaluation and 10 CSR 20-8.200(3)(B)1. Severe collapse potential.

**10 CSR 20-8.200(2) Alternative Design.** (Amendment language in italic below)

*The department may approve an Alternative Design when it determines that the proposed Alternative Design is as effective or more effective than the requirements of this chapter . . .*

***How will the DNR determine this effectiveness?***

How extensive would an Alternative Design evaluation be? How many staff positions are needed for evaluation, or would it just be the permit writer? Would the review include having a registered geologist designated under 256.456 RSMo provide expertise about siting of lagoons, earthen basins, etc., or does the registered engineer have the right to make such evaluations? Might DNR accept a recommendation stamped by a registered engineer without further review?

"Effectiveness" in this instance can lead to value judgements made by an individual not identified in this amendment. With the constant flux of employees at DNR, proving "effectiveness" needs to have something like a "scoresheet" that changing employees at DNR could utilize for determining effectiveness of Alternative Designs. However, instead of creating a new Alternative Design, why is DNR not just using a Variance Request? It is already an established protocol that DNR has been using for a long time. Why is there an apparent duplication occurring here that potentially complicates the permitting process?

Alternative Design is a major policy change that has been added to a rule amendment where "administrative" changes are repeated as the main goal of the rule review. In numerous meetings over the past 2 years, MCNA representatives have observed the "clumping" together of all changes in the rule and describing them as "administrative." We believe this is an attempt to make it appear all the changes proposed are minor, inconsequential changes. However, in the case of the addition of 10 CSR 20-8.200(2) Alternative Designs, with the potential

additional work involved and judgements made, it is an obvious policy change and needs serious consideration of the workload involved. MCNA does not consider the published Regulatory Impact Report description to adequately reflect these conditions and ignores the policy implications in Alternative Designs.

*. . . and when compliance with the design requirements of this chapter would be unfeasible or impractical.*

MCNA is concerned about how design requirements of this chapter would be deemed unfeasible or impractical. We consider the use of these two words to be open to interpretation and dependent on the person who is doing the interpretation. The terms are easier to define than the previous word used, "impracticable," but interpretation remains a problem. DNR has not explained the methods and criteria they will use to determine whether the Alternative Design is as effective as the requirements of the chapter, or when compliance with the design requirements of this chapter would be unfeasible or impractical.

Would these terms relate primarily with the cost of implementing the Alternative Design? Could it mean that a company had chosen a location for an earthen basin or lagoon in a location that would not allow for the DNR design requirement to be utilized? There are so many options; it's just not clear.

*. . . The owner of a project proposing an Alternative Design must provide engineering justification to the department. The justification must—*
*(A) Be requested in writing;*
*(B) Be signed, sealed, and dated by a professional engineer licensed in Missouri;*
*(C) Include an explanation of how compliance with a design requirement of this chapter is unfeasible or impractical; and*
*(D) Include all pertinent facts, data, reports, and studies certifying the proposed Alternative Design will result in equivalent or improved effectiveness compared to the minimum design requirement in this chapter. . . . (Missouri Register, Vol. 49, No. 14, July 15, 2024, page 1125)*

This list is an improvement over the first Federal Register language in Vol. 48, No. 20, October 16, 2023, p. 1825, which used the term "impracticable," the terms still have problems in their definitions and usage. Even though the required justification for using an Alternative Design is more detailed, the section again fails to identify the DNR staff that will be evaluating the Alternative Design information. It also fails to establish the method of measure to prove the Alternative Design is as effective or more effective than the requirements of this chapter.

## Public Participation

There is no requirement for public participation in evaluating an Alternative Design, like there is with a Variance Request. This is a serious shortcoming of the amendment, and needs to be fixed if an Alternative Design method of adapting DNR rules is to be incorporated. There must be an opportunity for public participation when an Alternative Design is requested.

The approval of an Alternative Design without public notice and a public comment period establishes a precedent that removes communities from protecting their neighborhoods from potential groundwater contamination from leaking lagoons, earthen basins, etc. DNR must provide a public comment period to ultimately protect the waters of the state from pollution.

**10 CSR 20-8.200(3)(B) Geohydrologic Evaluation**

*A geohydrologic[al] evaluation shall be requested on all new earthen basins, earthen basin major modifications, new wastewater irrigation sites, and subsurface absorption fields.* ***Supplemental information may be submitted for consideration by the department;***

MCNA is concerned about the vague statement of "*Supplemental information may be submitted for consideration by the department."* What does this mean? What supplemental information would meet the standard to be deemed appropriate for consideration by the DNR?

Will a geohydrologic evaluation be completed by a registered geologist and licensed engineers within the Missouri Geologic Survey (MGS)? What happens if the MGS geohydrologic evaluation found the proposed project did not meet the requirements of this chapter?

It is concerning that a justification being submitted is done so by an engineer licensed in Missouri, but there is no mention of requiring a registered geologist to be a member of the team overseeing the evaluation and submitting the justification.

**10 CSR 20-8.200(3)(B)1. Severe collapse potential**

*Earthen basins shall not be located in areas with a severe collapse potential rating unless* ***additional information supports an alternative determination by the department for the proposed location.***

MCNA agrees with DNR in that earthen basins shall not be located in areas with severe collapse potential. However, the DNR should not be authorized to use additional information to make an alternative determination. What supplemental information could be produced that would override geohydrologic evaluations completed by MGS? The statement is very vague and doesn't define the sorts of supplemental information that would be considered. MCNA opposes supplemental information being approved with only a document signed by an engineer licensed in Missouri. There is too much risk of collapse of an earthen basin or lagoon structure that could cause catastrophic pollution to waters of the state.