

West's Georgia Administrative Code
Title 391. Georgia Department of Natural Resources
Subtitle 391-3. Environmental Protection
Chapter 391-3-6. Water Quality Control

Ga Comp. R. & Regs. 391-3-6-.20

391-3-6-.20. Swine Feeding Operation Permit Requirements
For Operations With More Than 3000 Animal Units.

Currentness

(1) Purpose.

The purpose of this paragraph 391-3-6-.20 is to provide for the uniform procedures and practices to be followed relating to the application for and the issuance or revocation of permits for swine feeding operations with more than 3000 Animal Units. Nothing in this paragraph shall be construed to preclude the modification of any requirement of this paragraph when the Division determines that the requirement is not protective of the environment.

(2) Definitions.

All terms used in this paragraph shall be interpreted in accordance with the definitions as set forth in the Act unless otherwise defined in this paragraph or in any other paragraph of these Rules:

- (a) "Act" means the Georgia Water Quality Control Act, as amended;
- (b) "Swine feeding operation" or "operation" means a lot or facility where swine have been, are, or will be stabled or confined or fed or maintained for a total of at least 45 days in any 12-month period, and the confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.
- (c) "Animal Unit" (AU) is a unit of measurement for any swine feeding operation calculated by the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4.
- (d) "Barn" means a structure where confinement feeding (feeding in limited quarters under a roof) occurs. Structures where confinement feeding does not occur are not considered "barns" for the purposes of this rule.
- (e) "Certified operator" means any person who has been trained and certified by the Georgia Department of Agriculture and has direct general charge of the day-to-day field operation of a swine feeding operation waste storage and disposal system, and who is responsible for the quality of the treated waste.
- (f) "Closure plan" means the plan approved by the Division for clean up and closure of the swine feeding operation and associated waste storage and disposal facilities.

(g) “Concentrated Animal Feeding Operation,” or “CAFO,” means a swine feeding operation which is defined as a Large CAFO or Medium CAFO by [40 CFR 122.23 \(4\) and \(6\)](#), or that is designated as a CAFO.

(h) “Existing” applies to that which existed prior to the effective date of this rule. “Existing operation” means a swine feeding operation that was in operation prior to September 15, 2003.

(i) “Freeboard” is the extra depth added to a waste storage lagoon or structure as a safety factor between the designed full depth and the overflow depth. This is the vertical distance below the lowest point of the lagoon or structure berm above which the liquid level must never rise except in the case of a storm event exceeding the design maximum precipitation event.

(j) “Natural Resources Conservation Services” (NRCS) is an agency within the United States Department of Agriculture.

(k) “New” applies to that which existed on or after September 15, 2003. “New or expanding operation” or “new swine feeding operation” means a swine feeding operation the construction or expansion of which is commenced on or after September 15, 2003.

(l) “NRCS guidance” means the latest editions of the Natural Resources Conservation Service (NRCS) Agricultural Waste Management Field Handbook, Part 651, Field Office Technical Guidance Section IV Georgia, and other applicable publications of the NRCS. A certified specialist or trained person may use NRCS guidance to develop or modify a NMP.

(m) “Nutrient Management Plan” (NMP) is a plan which identifies actions or priorities that will be followed to meet clearly defined nutrient management goals at an agricultural operation. Defining nutrient management goals and identifying measures and schedules for attaining the goals are critical to reducing threats to water quality and public health. The NMP should address activities related to compliance with effluent limitations and other permit requirements, including manure handling and storage, land application of manure and wastewater, site management, record keeping, and management of other utilization options. For a swine feeding operation with a liquid manure handling system, the NMP must be developed or modified by a “certified specialist” as defined by the Division. The Division will specify the requirements for certification. For a swine feeding operation that handles dry manure, the NMP must be developed by a person trained in the subject by an academic or trade organization; it should include emergency response planning and a closure plan for abandonment of any facility used for the treatment or storage of animal waste. The requirements for submittal and approval of the NMP are specified in the following paragraphs.

(n) “Owner” means any person owning any system for waste treatment and disposal at a swine feeding operation. “Owner or operator” means any person who owns, leases, controls, or supervises a swine feeding operation. For the purpose of paragraph 391-3-6-.20 (4) of these rules, if a person intends to operate a swine feeding operation with another entity that owns the swine, directs the manner in which the swine will be housed, or controls the inputs or the other material aspects of the operation, this person shall be the operator and the owner shall be the entity that owns the swine, directs the manner in which the swine will be housed, or controls the inputs or the other material aspects of the operation.

(o) “Permit” means a permit applied for and issued in accordance with the terms and conditions for paragraphs 391-3-6-.06, Waste Treatment and Permit Requirements (individual NPDES permits), or 391-3-6-.11, Land Disposal and Permit Requirements (non-NPDES individual land application system or “LAS” permit), or 391-3-6-.15, Non-Storm Water General

Permit Requirements (general NPDES permit), or 391-3-6-.19, General Permit - Land Application System Requirements (non-NPDES general LAS permit), of this Chapter.

(p) "Removed from service" means:

1. The waste storage and disposal facilities no longer receive swine wastes and the facilities are not being serviced or maintained; or
2. The owner or operator informs the Division that the swine feeding operation has been closed and removed from service; or
3. The Division has ordered the facilities closed; or
4. An order has been issued by a court to cease operation and close the facilities.

(q) "Wetted area" or "disposal area" is the land area where swine waste is sprayed, spread, incorporated, or injected so that the waste can either condition the soil or fertilize crops or vegetation grown in the soil.

(r) "100-year, 24-hour storm event" is the maximum 24-hour precipitation event expressed in inches with a probable recurrence interval of once in 100 years, as defined by the National Weather Service of the United States Department of Commerce in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments.

(s) "100-year flood plain" is the land inundated from a flood whose peak magnitude would be experienced on an average of once every 100 years. The 100-year flood has a 1% probability of occurring in one given year.

(t) "3000 AU" means three thousand animal units. Paragraph 391-3-6-.20 (2) (c) notwithstanding, the numbers of animals in any of the following categories are equivalent to 3000 AU:

1. 7,500 swine each weighing 55 pounds or more,
2. 30,000 swine each weighing less than 55 pounds (immature swine or nursery pigs).

(3) Basic Permit Requirement.

(a) Any person who owns or operates a swine feeding operation with greater than 3000 AU shall obtain a permit from the Division in accordance with the following:

1. Any person who is the owner of a swine feeding operation with more than 3000 AU and uses liquid manure handling must apply for an LAS permit from the Division, unless an NPDES permit is required by 391-3-6.20(3)(a)(2).

2. Any person who is the owner of a swine feeding operation with more than 3000 AU and uses liquid manure handling is required to obtain an NPDES permit per 40 CFR 122 if there are discharge(s) to a water of the State excluding subsurface water (groundwater).

(b) Two or more swine feeding operations under common ownership are considered to be a single operation subject to this paragraph if they adjoin each other (are contiguous) or if they use a common area system for the disposal of wastes.

(c) Discharges from a CAFO include discharges of manure, litter, or process wastewater from land application areas under the control of the CAFO that are not exempt as “agricultural storm water discharges.” Precipitation-related discharges qualifying as agricultural storm water discharges are not subject to these permit requirements. For discharges from the land application area to qualify as agricultural storm water, manure and wastewater must be applied in accordance with site-specific practices that ensure appropriate agricultural utilization of nutrients [under [40 CFR 122.23\(e\)](#)].

(d) The Division will notify the public of a proposal to grant coverage under a general NPDES permit or a proposed individual NPDES permit and make available for public review and comment the permit application, the notice of intent, the NMP, and the draft terms of the NMP to be incorporated into the permit.

(e) The sale, lease, or other transfer of ownership or operating control of any swine feeding operation with greater than 3000 AU to any other corporate or partnership entity or to any individual person or persons unrelated by blood, marriage, or adoption to the existing operator shall require that a new permit be applied for, in accordance with the applicable paragraph or paragraphs of this rule.

(f) Exclusions from all permit requirements of this paragraph are made for the following facilities unless they are defined as a concentrated animal feeding operation per 40 CFR 122, or the Division has made a case-by-case designation as a concentrated animal feeding operation, and they discharge, in which cases NPDES permitting is required by [40 CFR 122.23](#):

1. A livestock market, sale barn, stockyard, or auction house where animals are assembled from at least two sources to be publicly auctioned or privately sold on a commission basis and that is under state or federal supervision. However, these facilities are defined as swine feeding operations if they meet the definition of a swine feeding operation in 391-3-6-20(2)(b).

(g) Any person who removes and transports animal waste from its point of origin shall conform to the animal manure handler rules of the Georgia Department of Agriculture.

(4) Permit for Swine Feeding Operations with more than 3000 AU.

(a) New swine feeding operations with more than 3000 AU, or existing operations that are expanding production so that they will have more than 3000 AU, which propose to commence operation after September 15, 2003 must obtain an individual

permit in accordance with this paragraph prior to commencing construction for the operation. Permit applications should be submitted 180 days in advance. Any existing swine feeding operation which proposes to expand to more than 3000 AU must obtain an individual permit and comply with the requirements of this paragraph prior to any such expansion or operation of such an expanded facility.

(b) There shall be no discharge of pollutants from the operation into the surface waters of the State, as defined in the Act, §O.C.G.A. 12-5-22(13). There shall be no discharge of pollutants into ground water which would cause ground water quality not to comply with the maximum contaminant levels established in Georgia's Rules for Safe Drinking Water 391-3-5.

(c) The permit applicant shall have waste storage and disposal systems designed by a professional engineer registered in Georgia, at least as stringently as NRCS guidance, and shall implement an NMP approved by the Division prior to startup. The permittee shall not start feeding any swine at the permitted operation before obtaining written approval from the Division for startup, subsequent to a final construction inspection by the Division.

(d) The operation must have a certified operator prior to startup. The operator must be trained and certified in accordance with 391-3-6-.20(9).

(e) The owner or operator shall, after completing a site evaluation and before any site preparation or construction commences, notify all adjoining property owners and all property owners who own property located within one mile of any boundary of the swine feeding operation of that person's intent to construct the swine feeding operation. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. The written notice shall include all of the following:

1. The name and address of the person intending to construct a swine feeding operation.
2. The type of swine feeding operation and the design capacity (in number of swine) of the proposed swine waste management system.
3. The name and address of the technical specialist preparing the waste management plan.
4. The address of the local Soil and Water Conservation District office.
5. A statement informing the adjoining property owners and the property owners who own property located within one mile of the proposed swine feeding operation that they may submit written comments or questions to the Division.

In addition, the owner or operator must conduct a minimum of one public meeting to present to the public the proposed project, its purpose, design, and environmental impacts. The meeting date and time must be advertised at least 30 days in advance in local newspapers with circulation covering all areas impacted by the project. Provisions to receive written comments should also be made. Evidence of notification of adjoining property owners, minutes of the public meeting, proof of advertisement, and opinions derived from the meeting must be submitted to the Division. Prior to making a decision on whether to issue a permit, the Division will require the permit applicant to run a notice in the largest newspaper of general circulation in the

affected county and will provide a 30-day public comment period. Furthermore, the Division may conduct a public hearing on the application prior to making any final decision.

(f) The system must be designed to handle the runoff from a 100-year, 24-hour storm event without an overflow from the waste storage lagoon or structure or storm water runoff from the disposal fields.

(g) Any waste storage lagoon or structure shall be provided with a synthetic liner such that the vertical hydraulic conductivity does not exceed 5×10^{-7} cm/sec. Individual waste storage lagoons or structures shall not exceed 100 acre-feet in volume.

(h) It is required that a minimum of 2 feet of freeboard be maintained in the waste storage lagoons or structures at all times.

(i) Barns, waste storage lagoons or structures, and wastewater disposal systems shall not be located within a 100-year flood plain.

(j) The following buffers shall be maintained:

1. 750 feet between disposal area and any residence or places of public assembly under separate ownership,
2. 200 feet between disposal area and property lines,
3. 200 feet between disposal area and water wells,
4. 150 feet between disposal area and drainage ditches, surface water bodies, or wetlands,
5. 1,750 feet between waste storage lagoons, structures, or barns and any occupied residence,
6. 1,750 feet between waste storage lagoons, structures, or barns and any public use area, church, picnic area, playground, school, hospital, outdoor recreational facility, national park, state park, historic property or child care center,
7. 1,750 feet between waste storage lagoons, structures, or barns and any property boundary,
8. 1,750 feet between waste storage lagoons, structures, or barns and any wells that supply water to a public water system, or any other well that supplies water for human consumption, and
9. 2,640 feet between waste storage lagoons, structures, or barns and waters of the State (not including ephemeral and intermittent streams).

(k) At least one up-gradient and at least two down-gradient ground water monitoring wells shall be installed for each drainage basin intersected by the disposal field and for each waste storage lagoon or structure. The number, location, design, and construction specifications of the monitoring wells shall be reviewed and approved by the Division prior to permit issuance. The wells must be properly installed prior to the beginning of feeding of swine.

(l) The permit will contain specific requirements for monitoring the effluent and ground water monitoring wells. This will usually consist of quarterly monitoring of the effluent for BOD5, TSS, TKN, NH3, NO3 and pH, as well as quarterly monitoring of the wells for specific conductivity, NO3, pH and depth to ground water. Monitoring will also be required to determine soil phosphorus adsorption, sodium adsorption ratio, cation exchange capacity, and cumulative loading of copper and zinc.

(m) The permit may require periodic monitoring of any wet weather ditches or perennial streams which are in close proximity to disposal fields.

(n) The permittee must submit an annual report to the Division. The annual report must include the items specified in the permit.

(o) The owner or operator shall provide the evidence of financial responsibility in accordance with paragraph 391-3-6-.20 (7) prior to permit issuance. A closure plan in accordance with paragraph 391-3-6-.20(8) shall be provided with the permit application. The sum of the following costs must also be included in the evidence of financial responsibility:

1. Ten percent of the initial capital costs for construction of the entire hog-growing facility swine feeding operation (barns, pens, feed storage, waste management, etc.)
2. \$100,000 to cover the costs of any fines that may be imposed by the Division for violations of the laws, rules, regulations, and permits associated with the facility.

(p) These operations are prohibited from using open lagoons or structures. Lagoons and waste storage facilities must be provided with airtight covers. Air pollution control devices using best available technology must be installed on all lagoon or structure cover vents and openings to remove ammonia, hydrogen sulfide, methane, formaldehyde, and any other organic and inorganic air pollutants which may be required by the Division. Such air pollution control devices must meet all requirements of the Division and Georgia's Rules for Air Quality Control (391-3-1), and no swine feeding operation permit for new or expanding operations with more than 3000 AU shall be issued by the Division unless an appropriate air quality control permit can be issued simultaneously.

(q) These operations are prohibited from using spray irrigation of lagoon or structure effluent. Lagoon effluent must be incorporated into the disposal fields using subsurface injection at a depth not less than 6 inches.

(r) These operations shall be assessed penalties for failure to comply with the terms of this paragraph, the Act, or the individual permit according to the following schedule:

1. Lagoon or structure breach or loss of containment, \$50,000 for the first day and \$100,000 per day for each day within a 12 month period thereafter during which a release occurs.
2. Land disposal field runoff, \$25,000 per day.
3. Discharge to ground water on site causing ground water to exceed any maximum contaminant limits in Georgia's Rules for Safe Drinking Water, \$5,000 per day.
4. Discharge to ground water causing increases of pollutant concentrations at the property line above ambient levels, \$5,000 per day and immediate cessation of land disposal.
5. Second occurrence of any of the failures to comply specified above in paragraph 391-3-6-.20(4)(r)(1),(2),(3),or(4), immediate revocation of the individual permit and assessment of the appropriate penalty.

(s) These operations shall submit a compliance history and other information with the permit application in accordance with paragraph (6) of this rule.

(5) Degree of Pollutant Treatment Required and Alternative Technology.

(a) The owner or operator of any swine feeding operation covered by rule 391-3-6-.20 shall ensure that all wastes from a swine feeding operation shall receive such treatment or corrective action so as to ensure compliance with the terms and conditions of the permit.

(b) If retrofitting the waste handling storage and disposal system of any swine feeding operation covered by 391-3-6-.20 with alternative technology becomes economically achievable, the Director may require any swine feeding operation to eliminate lagoons or structures or spray fields. Alternative technologies may include, but are not limited to:

1. Drying/dewatering in greenhouse - type facilities,
2. Composting by in-vessel method,
3. Mechanical separation,
4. Biogas production,
5. Soil incorporation, and
6. Soil injection.

(6) Refusal to Grant Certain Permits in accordance with §O.C.G.A. 12-5-23 (d), (e), (f), and (g).

(a) An applicant for a permit for a new or expanding swine feeding operation with more than 3000 AU shall submit the following information to the Director as it pertains to the applicant and, in the case of a corporation or partnership, to the corporation, partnership, officer, director, manager, partner, and each shareholder of five percent or more of the stock or financial interest in the corporation or partnership:

1. The name, social security number, taxpayer identification number, and business address.
2. Background information and a three-year environmental compliance history of any facility associated with any of the above individuals in any state. The information and compliance history shall be sufficient to address the following:
 - (i) intentionally misrepresented or concealed any material fact in permit application submitted;
 - (ii) obtained or attempted to obtain another permit by misrepresentation or concealment;
 - (iii) pleaded guilty or been convicted by final judgment, and all appeals have been exhausted, in this state or any other state or federal court of any felony involving moral turpitude;
 - (iv) pleaded guilty or been convicted by final judgment and all appeals have been exhausted to a third or subsequent material violation of any federal environmental law or any environmental law of this state or of any other state that presented a substantial endangerment to human health or the environment;
 - (v) adjudicated in contempt of any court order enforcing any federal environmental laws or any environmental laws of this state or of any other state;
 - (vi) the holder of any permit required for the discharge of pollutants as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, which permit has been revoked for reasons of noncompliance;
 - (vii) denied for reasons of noncompliance the issue of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, which permit has been revoked for reasons of noncompliance;
 - (viii) fish kills caused by any facility;
 - (ix) facility compliance status for the past three years including all violations of environmental permits, rules or statutes; and

(x) other information determined by the Director.

(b) The Director shall deny a permit application for a new or expanding swine feeding operation if the applicant or any person identified in (a) above:

1. intentionally misrepresented or concealed any material fact in the application submitted to the Director or an environmental permit application in any other state;
2. has obtained or attempted to obtain another permit from the Director or from any other state by misrepresentation or concealment;
3. has pleaded guilty or been convicted by final judgment and all appeals have been exhausted, in this state or any other state or federal court of any felony involving moral turpitude within the three years preceding the date of the application for such permit;
4. has pleaded guilty or been convicted by final judgment and all appeals have been exhausted to a third or subsequent material violation of any federal environmental law or any environmental law of this state or of any other state that presented a substantial endangerment to human health or the environment within three years preceding the date of the application for such a permit;
5. has been adjudicated in contempt of any court order enforcing any federal environmental laws or any environmental laws of this state or of any other state within three years preceding the date of the application for such permit;
6. was the holder of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, which permit has been revoked for reasons of noncompliance within three years preceding the date of the application for a permit under this article; and
7. was denied for reasons of noncompliance the issuance of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, within three years preceding the date of the application for a permit.

(c) The Director shall deny a permit application for a new or expanding swine feeding operation if a facility operated by or associated with any person identified in (a) above has failed to operate in full compliance with applicable environmental permits, rules, or statutes for less than eighty percent of the time during the three-year period preceding the date of the application for a permit or if the facility caused more than one fish kill during that period.

(d) The Director shall not deny a permit as stated in (b) above, if the Director finds that affirmative actions taken by the applicant mitigate the impact of any such material misrepresentations, concealment, convictions, adjudication, or violations. Such affirmative actions to be considered by the Director as mitigating factors shall include, but not be limited to, information or documentation related to the following:

1. Implementation by the applicant of formal policies, training programs, or other management controls to minimize the occurrence of future unlawful activities;
2. Installation by the applicant of environmental auditing or compliance programs; and
3. The discharge from employment of any individual who was convicted of a crime associated with environmental violations.

(7) Financial Requirements

Owners of new swine feeding operations with more than 3000 AU at any one time shall establish and maintain evidence of financial responsibility to provide for the closure of their waste treatment facilities and the proper disposal of their contents after closure of the facility.

(a) The owner must have a detailed written estimate, in current dollars, of the cost of hiring a third party to clean up and close the swine feeding operation. The owner must obtain a letter from the Division stating its concurrence that the owner's estimate of clean up and closure costs is reasonable. The owner must notify the Director that the estimate has been placed in the operating record.

1. During the active life of the facility, the owner must annually adjust the closure cost estimate for inflation.
2. The owner must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes to the closure plan increase the maximum cost of closure at any time during the remaining active life.
3. The owner may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum cost of closure. The owner must notify the Director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) Financial assurance for closure: The owner of each swine feeding operation with an annual average of greater than 3000 AU must establish financial assurance for closure of the facility. The owner must provide continuous coverage for closure until released from financial assurance requirements by the Director. The owner must choose from the options as specified in paragraphs (c) through (f) of this section. The mechanism for financial assurance must be submitted to the Division for approval and must also allow the Director access to the funds in the event of failure of the owner to close the facility.

(c) Closure trust fund.

1. An owner may satisfy the requirements of this section by establishing a closure trust fund and submitting an originally signed duplicate of the trust agreement to the Director. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

2. After the trust fund is established, whenever the current closure cost estimate changes, the owner must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

3. If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner may submit a written request to the Director for release of the amount in excess of the current closure cost estimate.

4. If an owner substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current closure cost estimate covered by the trust fund.

5. After beginning partial or final closure, an owner or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Director will instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

6. The Director will agree to termination of the trust when:

(i) An owner substitutes alternate financial assurance as specified in this section; or

(ii) The Director releases the owner from the requirements of this section.

(d) Closure letter of credit.

1. An owner may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit and submitting the letter to the Director. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or state agency.

2. The letter of credit must be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: The type of facility, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

3. The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current

expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

4. The letter of credit must be issued in an amount at least equal to the current closure cost estimate.

5. Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Director.

6. Following a final administrative determination that the owner has failed to perform final closure in accordance with the approved closure plan when required to do so, the Director may draw on the letter of credit.

7. The Director will return the letter of credit to the issuing institution for termination when:

(i) An owner substitutes alternate financial assurance as specified in this section; or

(ii) The Director releases the owner from the requirements of this section.

(e) Closure insurance.

1. An owner may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Director. By the effective date of these rules the owner or operator must submit to the Director a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these rules, the owner or operator must submit the certificate of insurance to the Director or establish other financial assurance as specified in this section. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2. The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

3. The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

4. After beginning final closure, an owner or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Director. Within 60 days after receiving bills for closure activities, the Director will instruct the insurer to make reimbursements in such amounts as the Director specifies in writing if the Director determines that the final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines that the owner is no longer required to maintain financial assurance for final closure of the particular facility. If the Director does not instruct the insurer to make such reimbursements, he will provide to the owner a detailed written statement of reasons.

5. The owner must maintain the policy in full force and effect until the Director consents to termination of the policy by the owner. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these rules, warranting such remedy as the Director deems necessary. Such violation will be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

6. Each policy must contain a provision allowing assignment of the policy to a successor owner. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

7. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner, as evidenced by the return receipts.

Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Director deems the facility abandoned; or
- (ii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or
- (iii) The owner is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
- (iv) The premium due is paid.

8. Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Director.

9. The Director will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance; or

(ii) The Director releases the owner or operator from the requirements of this section.

(f) Surety Bond Guaranteeing Closure.

1. An owner or operator may demonstrate financial assurance for closure by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. The owner or operator must notify the Director that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2. The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.

3. Under the terms of the bond, the surety will become liable on the bond obligation when:

(i) The owner or operator fails to perform as guaranteed by the bond; or

(ii) The Director notifies the owner or operator that they have failed to meet the requirements of these rules.

4. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

5. The Director will give written consent to the owner or operator that he may terminate the surety bond when:

(i) An owner or operator substitutes alternate financial assurance; or

(ii) The Director releases the owner or operator from the requirements of this section.

(g) Release of the owner from the requirements of this section: Within 60 days after receiving certifications from the owner and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

(h) Failure of the owner to close the facility in accordance with 391-3-6-.20(8) of this rule shall constitute forfeiture of the funds retained in the financial assurance mechanism and the Director shall be allowed access to the funds to close the facility.

(8) Closure.

(a) Closure for new swine feeding operations with more than 3000 AU shall include, but may not be limited to the following:

1. The sampling, analysis, and reporting of results of all remaining livestock waste, including any sludge and the top 6 inches of any lagoon or structure soil liner;
2. The removal of all remaining livestock waste, including sludge, and the removal of a minimum 6-inch thickness of soil throughout all lagoon or structure interiors;
3. The application of all such wastes to cropland or pasture at agronomic rates;
4. The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports, and any other waste conveyance structures;
5. The management of any impounded precipitation in any remaining excavations if the excavations are not immediately filled and returned to the pre-construction condition; and
6. Any monitoring wells will be filled, plugged, and sealed in accordance with procedure approved by the Division.

(b) For new swine feeding operations with more than 3000 AU, the owner shall submit a detailed closure plan for clean up and closure of the swine management facility with the permit application. This plan shall include a schedule for completion of closure within six months after the facility is removed from service. This plan shall be updated with future subsequent renewals of the permit.

(9) Operator Training and Certification Requirements.

(a) Swine feeding operations are required to have certified operators prior to the feeding of swine.

(b) Swine feeding operators shall be trained and certified by the Georgia Department of Agriculture. Proof of such training, certification, and continuing education shall be maintained by the Department of Agriculture and records provided to the Georgia Environmental Protection Division.

(c) Certification training, agenda, and topics will be determined by the Georgia Department of Agriculture; but will include, at a minimum, best management practices, nutrient management planning, understanding regulations and water quality laws, standards, and practices, siting, pollution prevention, monitoring, and record keeping. Training programs will be structured

to address the needs of the operators of differing sizes and various waste management technologies. Continuing education will be required to maintain this certification.

Credits

Adopted July 6, 1999; Amended July 16, 2000; Amended Oct. 2, 2001; Amended Sept. 15, 2003. Amended Aug. 7, 2012.

Authority: [§O.C.G.A. Section 12-5-20, et. seq.](#)

Current with amendments available through October 31, 2013.

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