



Missouri Department of dnr.mo.gov

NATURAL RESOURCES

Michael L. Parson, Governor

Carol S. Comer, Director

June 15, 2018

RE: Comments on Valley Oaks Steak Company, LLC Operating Permit Application

Dear Concerned Citizen:

Thank you for your comments concerning the application of Valley Oaks Steak Company, LLC for a Concentrated Animal Feeding Operation (CAFO) general operating permit. The application is for a general operating permit for the operation of a new Class IB beef CAFO. This letter contains the comments or a summary of comments received during the public participation process and the Missouri Department of Natural Resources' response to comments received. In accordance with 10 CSR 20-6.020(1)(H) the Department does not have jurisdiction to address non-water quality related items.

Both federal regulations and state statutes and regulations have been developed specifically for design, construction, and operation of CAFO. U.S. Environmental Protection Agency's (EPA) CAFO regulations are contained in portions of 40 CFR 122 and 40 CFR 412. State statutes are found in Sections 640.700 to 640.750 RSMo, and regulations in 10 CSR 20-8.300 Manure Design Storage Regulation and 10 CSR 20-6.300 CAFO Regulation. Additional state regulations in 10 CSR 20-6 regarding the permitting process also apply but are not specific to CAFOs.

Comments were received that Missouri CAFO regulations are inadequate.

Response: CAFO regulations in Missouri incorporate all federal regulations with several additional requirements including buffer distance, neighbor notice requirements, design requirements, protection from inundation from a 100-year flood, and the requirement for all Class I CAFO to have an operating permit. State regulations at 10 CSR 20-6.300 and 10 CSR 20-8.300 require CAFO to be designed, constructed, operated, and maintained as no-discharge for the protection of groundwater and surface water. Section 644.051.3a RSMo states "Any point source system designed to hold, convey, contain, store or treat domestic, agricultural or industrial process wastewater shall be designed by a professional engineer registered in Missouri in accordance with the commission's design rules." These requirements are protective of water quality.

Chapter 536 RSMo outlines the procedure for petitioning for rule changes. Suggestions can be submitted in written form and faxed to 573-522-9920, emailed to cleanwater@dnr.mo.gov, or mailed to Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102.



Comments were received regarding possible violations of city and county ordinances and zoning.

Response: The development and enforcement of local ordinances is the responsibility of the local governing body. This issue does not fall within the scope of this permit action or the Missouri Clean Water Law.

Comments were received that CAFO regulations for manure handling are different than regulations for domestic sewage wastewater treatment facilities and regulations for single family residences.

Response: The Department acknowledges that CAFO regulation and residential sewer system regulations are different. State regulations for the construction and operation of a CAFO are contained in the 10 CSR 20-6.300 and 10 CSR 20-8.300. Regulations for the design of wastewater treatment facilities are in other sections of 10 CSR 20-8 and the effluent limitations are contained in 10 CSR 20-7.015. Regulations for single family residences for on-site waste disposal is administered by the Department of Health and Senior Services. These differences do not affect the CAFO permit conditions and are not considered in the context of a permit decision.

Comments were received that additional studies should be conducted to determine environmental impacts.

Response: The regulations developed by the Department for the design and operation of CAFOs are for the protection of surface and groundwater and have taken environmental studies into consideration. The no-discharge requirement is the most restrictive effluent limitation that can be required of a permitted facility and is protective of water quality.

Comments were received asking if the engineering plans for the structures were reviewed or discussed prior to issuance of the permit.

Response: Engineering plans are not required by Missouri CAFO regulations to be submitted with an operating permit application. In accordance with Section 644.051 RSMo, any point source designed to hold, convey, store or treat domestic, agricultural, or industrial process wastewater must be designed by a Professional Engineer (P.E.) registered in Missouri. Design rules specific to CAFO can be found in 10 CSR 20-8.300. The Valley Oaks Steak Company, LLC application was sealed by a P.E., certifying that the project was designed in accordance with the regulation. In accordance with 10 CSR 20-6.300(2)(F)4 the Department examines whether the structure adheres to the regulation and does not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the manure system. Issuance of a permit does not include approval of such features.

Comments were received about the potential of the proposed CAFO to contaminate ground and surface water.

Response: Regulations found in 10 CSR 20-8.300 and 10 CSR 20-6.300 require CAFOs to be designed, constructed, operated and maintained as no-discharge for the protection of groundwater and surface water. The application indicates the operation was designed by a P.E. registered in Missouri in accordance with design regulations. Discharge for any other reason is not authorized. The manure cannot be exposed to precipitation or stormwater without runoff containment prior to its use as a fertilizer. Valley Oaks must sample the manure for nitrogen and

phosphorus content so that it is applied at agronomic rates to prevent excess runoff of nutrients. The proposed facility meets the regulatory setback distances to features such as streams, ponds, wetlands, and wells. The no-discharge requirement is the most restrictive effluent limitation that can be required of a permitted facility and is protective of water quality.

Comments were received regarding the requirements for the monitoring of water quality.

Response: Regulations require CAFOs to be designed, constructed, operated and maintained as no-discharge for the protection of groundwater and surface water. Animals must not have contact with waters of the state and the manure cannot be exposed to precipitation without runoff containment prior to its use as a fertilizer. Valley Oaks must sample the manure for nitrogen and phosphorus content so that it is applied at agronomic rates to prevent excess runoff of nutrients. The Department's Water Protection Program periodically tests and assesses waterbodies throughout the state with respect to water quality standards. Waterbodies not meeting water quality standards are placed on the impaired waters 303(d) List. This will identify the section of the stream that is impaired and the contributing pollutant(s) to help state and federal agencies to address the water quality issues of that stream. This list can be accessed online at <https://dnr.mo.gov/env/wpp/waterquality/303d/303d.htm>.

Comments were received about the effects the proposed CAFO may have on groundwater levels.

Response: In Missouri there are no statutes or regulations that specify how much groundwater may be used. Missouri is a riparian water rights state, which means all landowners generally have a right to a reasonable use of their water resources.

Comments were received concerning the CAFO's water source and area residents experiencing low water pressure.

Response: The CAFO's water source is at the discretion of the owner. The Missouri Clean Water Law and its implementing regulations do not establish requirements specific to the water source of a CAFO. This issue does not fall within the scope of this permit action. If an existing well is to be used or a new well is constructed, it must meet requirements in 10 CSR 23-3. If low water pressure is experienced, you should contact your water supplier.

Comments were received regarding the potential for odor and air quality, and air pollution from the proposed CAFO.

Response: Class I CAFOs must meet the required minimum buffer distance required between all confinement buildings and wastewater storage structures, and the nearest existing public building or occupied residence. Valley Oaks Steak Company, LLC has complied with the minimum 2,000 ft buffer distance for a Class IB CAFO. This is the only state law or regulation regarding odor or air pollution for Class IB CAFOs that falls within the scope of this permit action. The Department's odor regulations CAFO apply only to Class IA operations.

Comments were received regarding residences within the buffer distance requirements.

Response: The Department required the applicant to reevaluate the buffer distance to occupied residences. Upon review, it was determined that one confinement building did not comply with the 2,000 ft buffer distance. To comply, the applicant proposed to physically separate the portion of the confinement building not meeting the buffer distance by cutting and removing a portion.

In addition, the applicant proposed to add another confinement building to the application and similarly separate the building to comply with the buffer distance (see enclosure; also available at <https://dnr.mo.gov/env/wpp/cafo/index.html>). The buildings that fall within the 2,000 ft buffer distance are not permitted for the confinement of animals. With these modifications, Valley Oaks Steak Company, LLC has complied with the minimum 2,000 ft buffer distance between the nearest confinement building or wastewater storage structure and public building or occupied residence. Residences that are owned by the CAFO owner are not subject to buffer distance requirements.

Comments expressing concern about the location of the proposed CAFO in relation to residential areas, Civil War Museum, Battlefield and Cemetery, Century Farms, Powell Gardens; that the location doesn't follow University of Missouri Extension guidance publications for location; and that confinement buildings are located in the Federal Emergency Management Agency (FEMA) 100-year floodplain.

Response: In addition to the buffer distance requirement, the Department reviews the confinement building location for the regulatory requirements of setback distances, geohydrologic evaluation if required, and protection from inundation from a 100-year flood event. Maps submitted with the application show all confinement buildings and manure storage structures to be located outside of the FEMA 100-year flood area and compliant with all regulatory setback distances. These are the only requirements regarding location that fall within the scope of this permit action. The Department is unable to give consideration to the types of entities that exist beyond the buffer distance. Extension guidance documents are not regulatory and cannot be enforced by the Department.

Comments were received stating that some people did not receive a neighbor notice and that it was not sent out prior to submitting the permit application.

Response: All Class I CAFO are required to meet neighbor notice requirements in Section 640.715 RSMo. All property owners within one and one half times the buffer distance must receive the neighbor notice. For Class IB CAFOs the distance is 3,000 ft. Valley Oaks Steak Company, LLC sent notifications on August 28, 2017, prior the Department receiving the application on August 31, 2017. Because this notice was incomplete and buffer distance was not measured from two confinement buildings, the Department required a second notice, which was sent January 30, 2018. Upon Department review of the second neighbor notice it was determined that Valley Oaks Steak Company, LLC complied fully with the neighbor notice requirements.

Comments were received regarding the number of animals in confinement reported on the application at the proposed CAFO that is one less than a Class IA CAFO, and what is to prevent them from having more.

Response: Applicants must provide design capacity regarding the number of animals at the operation. A CAFO may operate with the number of animals up to its permitted design, or its class limit as long as manure storage is not adversely affected. In the case of this facility, if the animal numbers exceed the Class IB size, the facility will be in violation of its permit and the operation would be required to reduce animal numbers. If the facility wishes to operate at the larger size classification a permit modification will be required.

Comments were received regarding the handling and storage of manure and urine produced by the operation, and whether a containment tank is required.

Response: Manure as defined in 10 CSR 20-8.300 includes the fecal and urinary excrements of animals. The facility proposes to use bedding material to adsorb the liquid portion of the manure resulting in solid material. The manure and bedding will be stored in confinement and compost buildings and not exposed to stormwater runoff or precipitation prior to use as a fertilizer. No process wastewater is proposed to be generated at the CAFO that would necessitate a liquid containment structure.

Comments were received regarding Valley Oaks Steak Company, LLC's development of their Nutrient Management Plan (NMP) and that recent land applications do not comply with the NMP submitted with the permit application.

Response: Regulations require all permitted CAFO to develop and implement a NMP that addresses nine required elements. Fields that are not under operational control of the CAFO operator are not required to be included in the NMP. The Department has reviewed the required elements of the NMP and determined that it complies with the regulatory requirements. Regulations also require the CAFO to keep records of all manure applications under its operational control and to submit a summary of those applications with the annual report. Compliance with the terms of the NMP after issuance of a permit is reviewed during inspections. The Valley Oaks Steak Company, LLC has been operating as a Class II Animal Feeding Operation (AFO). CAFO regulations are not applicable to AFOs of this size including NMP requirements.

Comments were received that not all of the nutrients will be absorbed or available to crops, and that with nitrogen-based applications phosphorus will be over-applied and could cause soil pollution.

Response: Manure contains inorganic and organic forms of nitrogen. Inorganic nitrogen is immediately available to plants, but some can be lost by volatilization. Incorporating manure reduces the amount that is lost to volatilization. Organic nitrogen must go through a mineralization process before it is available to the plants. A portion of this is available the first year, some the second year, and some is never available. Application rates must be calculated every year using the Plant Available Nitrogen (PAN) calculation. The PAN calculation takes into account the organic nitrogen that is available from the previous year's application, as well as any nitrogen excess or deficiencies resulting from the previous year's crop.

Valley Oaks must test manure for both nitrogen and phosphorus. Nitrogen-based applications are allowed if soil test phosphorus (P) levels are low, medium or optimum, or if the P-index rating is low or medium. While nitrogen-based manure applications under these conditions will often apply more phosphorus than is needed by the crop, the excess is beneficial for soil health.

If soil test phosphorus levels are high, or the P-index rating is high, manure applications must be phosphorus based. If soil test phosphorus levels are high and the P-index rating is very high, no manure applications are allowed.

Comments were received regarding the method and timing of land application.

Land application of manure to fields under the operational control of the CAFO owner or operator must be done according to their NMP and in compliance with the Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard (NMTS). The NMTS is incorporated into state regulations and contains Best Management Practices for

calculating agronomic application rates for the land application of manure, and includes setback distances from sensitive features, prohibits manure from being surface applied during frozen, saturated or snow covered soil conditions, or within 24 hours of a precipitation event that is likely to produce runoff.

Manure that is land applied to fields not under the operational control of the CAFO owner or operator is considered a manure transfer or export. CAFO are required to keep records of all manure transfers and provide all recipients a copy of the most recent manure analysis and the NMTS. As with any commercial fertilizer, the Department does not regulate the application of manure to land that is not under the operational control of the CAFO owner. However, over application of the manure that impacts a water body may be found unlawful according to Missouri law.

Comments were received relating to the manure being land applied containing antibiotics, pathogens, and metals.

Response: Land application is widely used and is the preferred method of disposing of animal manure. Domestic and industrial wastewater and sludge are also commonly land applied. Pathogen survival rates vary with the type of pathogen. Exposure to ultraviolet radiation, drying of the manure, and soil microbial activity helps to reduce pathogen concentrations.

The amount of metals in manure can vary and primarily depends on the metal content of animal feed. Research shows the metal content in manure is below the ceiling concentration and loading rates in 40 CFR 503 for land application of sludge. There are no state or federal regulations that require manure to be tested for antibiotics, pathogens, or metal content.

Comments were received that the soil sampling results in the NMP did not match samples by the United States Geological Survey (USGS) from the farm prior to purchase by the current owner.

Response: Nutrient content in the soil varies over time because of the type of crops grown and yields. For this reason, regulation requires phosphorus loss risk assessments and application rates in the NMP to be based on current soil sample results. Current soil sample results are defined in the NMTS as being less than five years old. The soil samples included in the NMP meet the requirements of the NMTS. The USGS samples may not meet this requirement.

Comments were received about runoff from land application fields getting on to adjoining property and who is responsible for any environmental impacts.

Response: Discharges of manure to waters of the state resulting from land application of manure, litter, or process wastewater by the CAFO are not permitted. Any such discharge is a violation and is subject to compliance and enforcement actions.

If a third party is conducting the application to fields that are not under the operational control of the CAFO, the third party is responsible for the transportation and application of manure. As with any commercial fertilizer, the Department does not regulate the application of manure to land that is not under the operational control of the CAFO owner. However, over application of the manure that impacts a water body may be found unlawful according to Missouri law. Any agreement between the CAFO, applicator, or landowner regarding liability is a civil agreement between those parties.

Comments were received regarding mortality management at Valley Oaks Steak Company, LLC.

Response: Each operation may choose the method of mortality management used. Acceptable methods include composting, incineration, rendering, and taking mortalities to a permitted landfill. Burial cannot be used for disposal of routine mortalities but may be used in the event of a mass mortality event and must be done in accordance with Missouri Department of Agriculture regulations. Valley Oaks Steak Company, LLC has identified off-site rendering as their method of mortality management.

Comments were received regarding discharges resulting from accidents or spills, the requirement for the facility to self-report discharges, and penalties for discharges or other non-compliance issues.

Response: CAFO permits contain requirements for inspections that are to be conducted by the CAFO on a regular basis. Records are required to be kept of these inspections and any deficiencies found during these inspections are to be noted and corrected as soon as possible. These inspections are intended to prevent unauthorized discharges. In the event of an unauthorized discharge the CAFO must report any discharge to the Department within 24 hours

of becoming aware of the discharge. This reporting requirement is consistent with other general and site-specific permits issued by the Department. Any unauthorized discharge is a violation and subject to compliance and enforcement actions. The type and severity of the actions taken, including penalties, are determined on a case-by-case basis.

Environmental concerns in the Kansas City region can be reported by contacting the Kansas City Regional Office at 816-251-0700 or by visiting <https://dnr.mo.gov/concern.htm>. Reported discharges and environmental concerns are promptly investigated by the Department.

Comments were received regarding sampling requirements.

Response: CAFO are required to be no-discharge facilities and any discharge is a permit violation regardless of the type or concentration of pollutants. Therefore, discharges sampling is not required because it is not authorized. State regulation requires the annual sampling of each unique source of manure for nutrient content and soil sampling every five years for fields that are required to be included in the NMP. The results of manure and soil samples are to be used to calculate annual manure application rates.

Comments were received that Valley Oaks Steak Company, LLC does not own the property where the buildings are to be built.

Response: The Department may issue permits that authorize the operation of a facility to those that build, use or operate a point source in accordance with 10 CSR 20-6.010 (1)(A). Many facilities, including CAFO, do not own the property on which they operate. In these instances, permits are issued to the owner of the operation rather than the owner of property. All permits issued by the Department are required to list a "Continuing Authority", which is the person or entity responsible for environmental matters at the facility if it ceases operation.

Comments were received about the biosecurity procedures of the operation.

Response: The development and implementation of biosecurity measures for the operation are not required under the Missouri Clean Water Law or its implementing regulations. This issue does not fall within the scope of this permit action.

Comments were received regarding the fact that Valley Oaks Steak Company, LLC owner does not live on-site.

Response: The Missouri Clean Water Law and its implementing regulations do not require owners or operators live on-site. This issue does not fall within the scope of this permit action.

Comments were received relating to health issues.

Response: The Clean Water Commission regulations require that CAFO operations be designed and operated as CAFO no-discharge facilities. The Missouri Department of Health and Senior Services indicates that “a review of scientific literature by the Missouri Department of Health and Senior Services has not documented conclusive evidence that concentrated animal feeding operations (CAFO) are a source of infectious, contagious, or communicable disease to surrounding communities.”

Source: <https://health.mo.gov/living/environment/hazsubstancesites/pdf/DHSSPerspectiveCAFO.pdf>

Comments were received relating the use of antibiotics and the prevention and spreading of diseases, health and welfare of livestock, and insect and other pest concerns.

Response: The Missouri Clean Water Law and its implementing regulations do not establish requirements for livestock welfare, antibiotic use, and insect or other pests. These issues do not fall within the scope of this permit action.

Comments were made relating to wildlife and endangered species,

Response: The no-discharge requirement for CAFO is protective of water quality for the purpose of aquatic life protection and livestock watering. This is the only requirement related to wildlife and endangered species that is within the scope of this permit action.

Comments were made relating to worker safety, possible use of cheap and illegal labor.

Response: The Missouri Clean Water Law and its implementing regulations do not establish requirements for worker safety or workforce eligibility. This issue does not fall within the scope of this permit action.

Comments were received relating to noise, local traffic conditions, maintenance of the roads, control of noxious weeds, quality of life, property values, property use, grain fed vs. grass feed beef.

Response: The Missouri Clean Water Law and its implementing regulations do not establish requirements specific to noise, local traffic conditions, maintenance of the roads, control of noxious weeds, quality of life, property values, property use, grain fed versus grass feed beef. These issues do not fall within the scope of this permit action.

Comments were received regarding the compliance history of Valley Oaks Steak Company, LLC and other companies under the same ownership, and past violations and enforcement actions by other state and federal agencies.

Response: Each permitted facility is responsible for complying with regulations and permit requirements. The Missouri Clean Water Law does not provide for the Department to consider violations at other facilities, or violations issued by other agencies, in its administrative actions. The Department inspects for compliance, and conducts compliance and enforcement activities as necessary when violations occur.

Comments were received asking if the public would be made aware of contacts and reports made to the Department by Valley Oaks Steak Company, LLC and where they would be located.

Response: Information, such as annual reports and inspection reports, can be obtained through the submission of a Sunshine Request. For more information about making a Sunshine Request, please visit the Departments Open Records/Sunshine webpage at <https://dnr.mo.gov/sunshinerequests.htm>. A Sunshine Request does not create an obligation by the Department to create documents that do not exist or to transmit material on a continuing basis.

Comments were received regarding the ability of the state to oversee the proposed CAFO.

Response: The Department's regional offices conduct regular inspections of permitted AFOs for compliance with regulations and permit requirements, and the Department promptly investigates all environmental concerns received by the public. All CAFO operating permits require the permittee to notify the Department in the event a discharge occurs, keep records on-site, and submit an annual report to the Department.

Comments were received that there are vacancies on the Missouri Clean Water Commission (CWC) and no decision regarding the permit should be made until the vacancies are filled.

Response: It is the responsibility of the Department to issue or deny operating permits consistent with the requirements of the Missouri Clean Water Law. The number of commissioners does not affect this responsibility.

Comments were received that the Department should take into account the public opposition to the facility, and that the Department deny the application and not issue a permit to Valley Oaks Steak Company, LLC.

Response: The Department reviews and considers all relevant and material comments before making a final decision. Section 644.051 RSMo requires that permits be issued or denied based upon compliance with state law.

Conclusion

The Department has reviewed the Valley Oaks Steak Company, LLC application and considered all relevant and material comments received during the public participation process. The Department is obligated to review each application equally with respect to compliance with regulations set forth by the Clean Water Commission. Based upon this review we have determined that the operating permit application is complete and that the operation meets the requirements of the Missouri Clean Water Law. In accordance with Missouri's regulations found

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in 10 CSR 20-6.300 and 10 CSR 20-8.300, an operating permit will be issued to Valley Oaks Steak Company, LLC.

Thank you for taking the time to provide your comments. We hope that this letter was valuable in providing answers to your questions, and if you have further questions, please contact Mr. Greg Caldwell by phone at 573-526-1426 or by mail at Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM

A handwritten signature in cursive script that reads "Chris Wieberg".

Chris Wieberg
Director

CW:gcs

c: Valley Oaks Steak Company, LLC

Enclosure