July 23, 2019

RE: Comments on Valley Oaks Feeders LLC Operating Permit Application

Dear Concerned Citizen:

Thank you for your comments concerning the June 19, 2019, new application from Valley Oaks Feeders LLC for a Concentrated Animal Feeding Operation (CAFO) general operating permit. The application is for a general operating permit for the operation of a Class IC beef CAFO. This letter contains the comments or a summary of comments received during the neighbor notice 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.

State statutes and regulations have been developed and passed specifically for design, construction, and operation of CAFOs: Sections 640.700 to 640.750 RSMo, 10 CSR 20-8.300 Manure Design Storage Regulation, and 10 CSR 20-6.300 CAFO Regulation. Additional state statutes and regulations also apply but are not specific to CAFOs. State laws regulating CAFOs must be consistent with and at least as protective as the federal Clean Water Act.

Comments were received requesting the Department hold a public hearing regarding this permit application.

Response: It is at the Department’s discretion to determine whether to hold a public hearing. A public hearing is required by 10 CSR 20-6.020(4) only “if there is significant technical merit and concern related to the responsibilities of the Missouri Clean Water Law.” The following responses fully address all technical concerns with merit that were raised by comments received during the neighbor notice related to the responsibilities of the Missouri Clean Water Law. Given the responses contained in this letter, there are no valid technical concerns related to the responsibilities of the Missouri Clean Water Law and; therefore, a hearing on this permit application will not be held. As noted by many commenters, the Department previously conducted a public hearing for this CAFO. The current permit application is for a different permit than the previous application, and the requests for a public hearing on this permit application were not related to the differences between those permits, but instead primarily raised general concerns of non-technical merit similar to the concerns raised at the prior public hearing. Therefore, an additional public hearing on this CAFO is not warranted.

Comments were received that a new application should not be considered because the previous permit decision was reversed.

Response: Chapters 640 and 644 RSMo and implementing regulations in 10 CSR 20-6.300 establish requirements for application submittals, application requirements, and Department reviews. In accordance with 640.715.3 RSMo, the Department shall issue a permit for a CAFO within 45 days of receiving a completed permit application and verification of compliance with
the neighbor notice, buffer distances, and associated design criteria set forth in 640.700 through 640.755 RSMo. The statute does not deem applications invalid based on the status or outcome of previous applications.

Comments were received regarding the compliance history of Mr. Ward, Valley Oaks Feeders 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 making a determination related to permit issuance or denial. The Department inspects for compliance, and conducts compliance and enforcement activities as necessary when violations occur.

Comments were received that the continuing authority was not identified.

The owner and continuing authority for this permit is Valley Oaks Real Estate, L.L.C., as submitted in the application. This company is a limited liability company currently registered and listed as active with the Secretary of State’s office under Charter No. LC001560422.

Comments were received about the potential of the proposed CAFO to contaminate ground and surface water, including nearby springs and drinking water wells.

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 Professional Engineer registered in Missouri in accordance with design regulations. The permit applied for does not allow for a discharge for any reason. The manure cannot be exposed to precipitation or stormwater without runoff containment prior to its use as a fertilizer. Valley Oaks Feeders LLC must sample the manure for nitrogen and phosphorus content so 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 concerning “storm water retention ponds,” that they should be considered process wastewater basins and that a construction permit should be required.

Response: Although there are ponds located at this facility, water from the production area is controlled to prevent it from leaving the production area. The ponds at this facility are used to provide water for the animals, as such, the facility’s plans and operational controls are designed to prevent any process wastewater from the production area from entering the watering ponds. The alleyways are the only production areas exposed to precipitation and these walkways are cleaned after use, with manure removed to the manure storage area to be combined in with the other dry process waste. Cattle, manure, mortalities, feed, diesel fuel, oils, and lubricants are all stored under cover/roof to prevent water ingress. Equipment is stored under roof and care is taken when moving feed, cattle, manure, and mortalities to prevent release in uncovered areas;
spills in these areas are promptly cleaned. Berms and swales are used to further divert rainwater from production areas. Grass is also planted to serve as a vegetated filter strip around production areas and the “freshwater” ponds to prevent erosion.

As the ponds do not contain process wastewater, and structural and operational controls are in place to prevent process wastewater from entering the ponds, construction of the ponds did not require a construction permit. Stormwater outflows from these ponds during rain events are considered agricultural stormwater and not a regulated discharge. Rooftop rainwater is diverted to these ponds as well, but this is stormwater, not process wastewater.

*Comments were received regarding the potential for odor, air emissions, toxic air emissions, air pollution, and impacts to air quality, including dust and particulate impacts 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 Feeders LLC complies with the minimum 1,000-foot buffer distance for a Class IC CAFO. This setback is the only state law or regulation affecting odor or air pollution for Class IC CAFOs that falls within the scope of this permit action. The Department’s odor regulations for CAFOs apply only to Class IA operations.

*Comments were received regarding residences within the neighbor notice distance not receiving proper notice.*

Response: All Class I CAFOs are required to meet neighbor notice requirements in Section 640.715 RSMo. Valley Oaks Feeders LLC sent notifications that met the statutory requirements on June 10, 2019 initiating the neighbor notice process. Section 640.715 RSMo states that the neighbor notice letter shall be sent to all landowners within the notice distance. All landowners in the notice distance were notified prior to the Department’s receipt of the current permit application.

*Comments were received regarding karst topography and losing streams in the vicinity of the CAFO.*

Response: Regulation 10 CSR 20-8.300 requires setback distances to features including wetlands, sinkholes, and gaining and losing streams. Regulation 10 CSR 20-6.300 incorporates by reference the *Missouri Concentrated Animal Feeding Operation Nutrient Management Technical Standard* (NMTS) which includes land application setback distances to wetlands, sinkholes, gaining streams and losing streams. A dataset of gaining and losing streams developed by the Departments’ Missouri Geological Survey (MGS) was consulted and did not indicate the presence of any losing streams within the setback distances of the CAFO. In addition, a Registered Geologist with MGS conducted a stream survey of streams on the Valley Oaks property on January 29, 2019. The evaluation determined these streams to be gaining streams, which have a required setback of 100 feet. Based on the Department’s review, the submitted plans comply with all of these setback requirements.
Comments were received raising concerns about soil properties in the area of the confinement buildings including permeability, runoff class, and depth to water table.

Response: 10 CSR 20-8.300 requires floors and pads of solid manure storage structures to be constructed of watertight materials such as concrete or compacted earthen base. Earthen floors must be compacted and be at least two feet above the groundwater table and bedrock. The floors of confinement buildings and solid manure storage buildings are constructed of concrete. There are no regulatory requirements for runoff class of soils in the design or operation of a CAFO.

Comments expressing concern about the location of the proposed CAFO, especially one of this size, in relation to residential areas, populated areas, neighborhoods, and 100-year floodplain.

Response: In addition to the buffer distance requirement, the Department reviews the confinement buildings 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 Federal Emergency Management Agency’s 100-year flood area and are 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 regarding the handling and storage of manure and urine produced by the operation.

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.

Comments were received about runoff from land application fields.

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, except when it is an agricultural stormwater discharge, in accordance with Section 644.059 RSMo. Any such discharge is a violation and is subject to compliance and enforcement actions.

If a third party is conducting the land 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 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 that a Valley Oaks Feeders, LLC steer had strayed onto an adjoining property, resulting in a potential discharge of manure.

Response: The issue of stray animals from CAFOs getting onto adjoining property does not fall within the scope of this permit action and is outside the jurisdiction of the Missouri Clean Water Law. The area where the steer is located in the photographs does not appear to meet the definition of an AFO and therefore, not subject to CAFO or stormwater regulations.

Comments were received about the “stem walls” and manure containment in the confinement barns, specifically that the manure is contained in the confinement pen area with only “stem walls” with gaps along the bottom. The comments often stated that manure would run out or ooze through these large holes, directly into soil and water. Comments were received about liquid waste storage. The comments stated these gaps under the wall will cause manure to discharge onto bare ground and then into the waters of the state. Some also stated that rain water could run through the manure.

Response: This permit application and supporting documentation describe the confinement barn structure, including feed troughs that serve as an interior “wall” along one side of each confinement area. These feed troughs are the “stem walls” mentioned in comments that have legs and an open space beneath them. The gaps beneath the feed troughs have been filled with concrete, creating a solid concrete pen wall or “stem” wall. The confinement buildings also incorporate the following components for manure containment:

1. The current application documents indicate the confinement areas of the buildings utilize bedding to maintain the manure as a dry process waste. Dry process waste is defined in 10 CSR 20-6.300 as “a process waste mixture which may include manure, litter, or compost (including bedding, compost, mortality by products, or other raw materials which is commingled with manure) and has less than seventy-five percent (75%) moisture content and does not contain any free draining liquids.” As such, there are no liquids or fluids to run or ooze out of the confinement pens.
2. Dry process waste may be stacked. It still must not have any free draining liquids.
3. The food troughs (stem walls) are the exterior barrier of the confinement pens. If any waste were to be outside the confinement pen, it would be contained under roof on a concrete alleyway outside of the troughs and confinement pens. The application states that manure in the alleyways will be cleaned up and transported to a manure storage structure.
4. Also, beyond the feed troughs and the driveway are some exterior solid concrete walls running the full length of the barn. These walls, along with a gutter and stormwater drain system, prevent precipitation and stormwater from coming into contact with manure. These outer walls would also serve to contain dry process waste if needed.
5. The application indicates the dry process waste will only be stored to 12 inches in the confinement pens, not the 27 inches mentioned in some of the comments.

10 CSR 20-6.300(2)(E)2 does not allow the Department to examine the adequacy or efficiency of structural components of waste management systems, only the adherence to the regulations. With regards to solid manure components, this includes the requirements for diversion of stormwater from confinement buildings and that floors and pads be constructed of watertight materials such as concrete or a compacted earthen base. The application is sealed by a Professional Engineer registered in Missouri along with a statement that the project is designed in accordance with 10 CSR 20-8.300. There is no regulatory requirement that prohibits the containment design described in the application. The permit requires these areas to be operated
as no-discharge areas, meaning discharges of manure, litter, or process wastewater to waters of the state are not allowed. Proper operation, containment, and response activities would be checked, investigated, addressed, and/or confirmed during routine compliance inspections.

Comments were received regarding the manure calculations and associated manure storage at this facility. Commenters raised concerns about the size of the cows used for these calculations.

Response: The application included the manure storage calculations. The storage amounts meet the requirements of 10 CSR 20-8.300 based upon many factors, including:

1. The manure generation for the anticipated numbers and sizes of cows, based on the widely used and Department-accepted industry standard, *Manure Characteristics, Manure Management Systems, Second Edition*, published by the MidWest Plan Service;
2. Alternative calculations (for all of the cattle being the largest size only) and storage calculations using only the existing buildings, not the proposed, completed facility storage;
3. Manure storage barn capacities. This does not include planned or calculated storage in the bagging room, although some manure will be in the room as it is being processed;
4. Confinement pen manure storage up to 12 inches;
5. Bedding to keep the manure moisture content no higher than 74.5 percent for dry process waste, in accordance with 10 CSR 20-6.300(1)(B)11. in all storage areas;
6. Stacking dry process waste. Commenters noted that the waste cannot be stacked, but the current AFO operations stack waste, without any free flowing liquids, in their current operation.
7. The amount of manure exported with 90 days of storage, as required by 10 CSR 20-8.300(5)(B)3;
8. The amount of manure land applied with 180 days of storage, as required by 10 CSR 20-8.300(5)(B)2; and
9. Manure does not have to be segregated into separate storage areas for export and land application. The design is simply required to provide adequate storage for the manure volumes generated using the above criteria. Furthermore, records must document manure land applied and manure exported which may be reviewed during an inspection or a facility records/annual report review. Inspections will confirm that all manure is properly stored in accordance with the facility’s plans reviewed during the permit application.

Manure calculations provided during the application process demonstrate that adequate storage is available for all manure.

Comments were received about potential runoff from CAFO areas including the walkways, sillage storage areas, and transportation of cattle from the buildings across the river.

Response: The animal walkway and sillage storage is part of the production area. Regulations prohibit discharge of manure, litter, process wastewater, or mortality by-products to surface waters of the state from the production area. As such, any runoff from the walkways into waters of the state would be a violation of the permit. The application identifies measures to maintain no discharge from these areas by containing the manure within walkways and alleyways, cleaning the areas daily and transporting any manure to storage structures, and berming around and partially covering the sillage storage area to prevent water ingress or egress. The current plan for moving cattle from the proposed confinement barns across the stream to the other confinement buildings and meat processing facility is to use trucks.
Comments were received stating the facility does not meet the requirements for a Class IC CAFO or has capacity larger than a Class IC.

Response: Regulations in 10 CSR 20-6.300 establish class size categories for AFOs and CAFOs based on the number of animal units in confinement. The class size category is used to determine the regulatory and permitting requirements an operation must follow. For new permits, the design capacity is used to determine the appropriate class size. Regulations in 10 CSR 20-6.300 allow operations to operate at an animal number level not to exceed their permitted class size as long as manure storage is not adversely affected. CAFOs are allowed to operate at a class size below the permitted class size or have a larger capacity than their permitted class size. As every CAFO facility can operate differently (i.e. fewer cows per pen), the Department does not set a maximum operating or size, but reviews the application to determine compliance with the minimum design requirements. Once a CAFO is in operation, the rolling average can be used to determine compliance with the permitted class size, but it is class size, not facility size, that is evaluated. Valley Oaks Feeders LLC is designed, proposed, and will be permitted as a Class IC CAFO.

Comments were received that a site-specific permit is required to combine the slaughterhouse and CAFO operations into one permit.

A single property or facility may have multiple permits, so long as all of the regulated activities are covered under the permits. The CAFO and the meat processing facilities have unique and separate waste streams and waste processing systems. As such, two different permits are allowed. All animal walkways are included in the CAFO permit, including walkways from the CAFO to the slaughterhouse.

Comments were received regarding the requirement for the facility to self-report.

Response: 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 Department’s 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 relating to health issues.

Response: 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 to contamination at Smithville Lake.

This comment does not appear to be related to this facility or this permit application.

Comments were received about the effects the proposed CAFO may have on groundwater levels, pressure and/or water quantity.

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 relating to quality of life and lifestyles, flies, the prevention and spreading of diseases, local wildlife, nutrition, food safety, neighbor relations, and property values.

Response: The Missouri Clean Water Law and its implementing regulations do not regulate quality of life, property values, pests, wildlife patterns, prevention and spreading of diseases, nutrition, food safety, neighbor relations, and property use. These issues do not fall within the scope of this permit action.

Conclusion

The Department has reviewed the Valley Oaks Feeders LLC application and considered all relevant and material comments received during the neighbor notice 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 in 10 CSR 20-6.300 and 10 CSR 20-8.300, an operating permit for a Class IC CAFO will be issued to Valley Oaks Feeders LLC.

Thank you for taking the time to provide your comments. We hope this letter was valuable in providing answers to your questions, and if you have further questions, please contact the Department’s CAFO Team by phone at 573-522-4502, by email at CAFO@dnr.mo.gov or by mail at Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176.

Sincerely,

WATER PROTECTION PROGRAM

Chris Wieberg
Director

CW:gws

c: Valley Oaks Feeders LLC