



Missouri Department of dnr.mo.gov

NATURAL RESOURCES

Michael L. Parson, Governor

Carol S. Comer, Director

June 15, 2018

Ms. Tasha M. Stephens
874 NW 1971 Road
Lone Jack, MO 64070

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

Dear Ms. Stephens:

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 your comments or a summary of comments received April 2 and April 6, 2018, and during the April 3, 2018, public hearing, and the Missouri Department of Natural Resources' response to comments received. The Department does not have jurisdiction to address comments regarding "non-water quality related items" pursuant to 10 CSR 20-6.020(1)(H).

Missouri statutes and regulations have been developed specifically for CAFO permits and operations. 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 CAFO specific.

Comment regarding the economic and social value of Powell Gardens on the Kansas City area by sponsoring various activities and events.

Response: The Missouri Clean Water Law and its implementing regulations do not allow the Department to consider the economic and social value of area businesses or attractions in permit decisions. This issue does not fall within the scope of this permit action.

Comment regarding the proposed site for nearly 7,000 cattle being densely populated and not suitable for a CAFO.



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Response: The Department reviews the confinement building location for the regulatory requirements of setback distances, geohydrologic evaluation if required, and flood protection. These are the only locational requirements established under the Missouri Clean Water Law for CAFO.

The application indicates that Valley Oaks' operation will comply with the minimum 2,000 ft buffer distance between all confinement buildings and wastewater storage structures and the nearest public building or occupied residence, as required for a Class 1B CAFO. Residences that are owned by the CAFO owner are not subject to buffer distance requirements.

Maps submitted with the application show all confinement buildings and manure storage structures to be located outside of the Federal Emergency Management Agency 100-year flood area and compliant with all setback distances.

No geohydrologic evaluation was required.

Comment relating impacts threatened and endangered species such as the Gray bat, Indiana bat, Northern long-eared bat, Mead's milkweed, and the Western prairie fringed orchid.

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

Comment regarding the danger of environmental harm including Sni-A-Bar Creek.

Response: CAFO regulations require CAFOs to be designed, operated and maintained as no-discharge for the protection of groundwater and surface water. The no-discharge requirement is the most restrictive effluent limitation that can be required of a facility.

The operation was designed by a Professional Engineer registered in Missouri in accordance with the design regulations. Livestock must not have contact with waters of the state and the manure cannot be exposed to precipitation or stormwater without runoff containment, until it is used as fertilizer. The proposed facility meets the regulatory setback distances to features such as streams, ponds, wetlands, and wells.

Comment that this is a Class IA CAFO and should be subject to all of the Class IA Requirements.

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. The design animal capacity of Valley Oaks Steak Company, LLC is within the Class IB size classification.

The Department can use the 12 month rolling average calculation to determine if a CAFO is operating within its permitted size classification. This calculation uses the actual number of animals in confinement each month for the current month and the previous eleven months. In the

case of this facility, if the animal numbers exceed the Class IB size the facility would be in violation of the 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 would be required.

Valley Oaks is a Class 1B CAFO, therefore odor requirements applicable to Class 1A operations do not apply.

The requirements in 10 CSR 20-6.300(3)(H) apply to Class IA CAFO with wet handling systems or those located in the watersheds of the Current, Jacks Fork, or Eleven Point Rivers. This requirement does not apply to Valley Oaks because it is not a Class IA CAFO, is not located in one of the designated watersheds and is not a wet handling system.

Comment regarding the maximum manure storage capacity.

Response: As a result of public comment the applicant was required to re-evaluate the manure storage calculations. The applicant submitted revised manure storage calculations that show 186 days of storage. This meets the regulatory requirement of a minimum of 180 days of storage.

Comment regarding the export of manure.

The CAFO is required to keep records of all manure exports, including date of transfer, name and address of recipient, and the source and amount of manure transferred. The recipient must be provided with the most recent manure analysis and a copy of the *Missouri Concentrated Animal Feeding Operations Nutrient Management Technical Standard (NMTS)*. The handling of manure exports is not required to be submitted with an operating permit application.

The facility must provide for adequate storage for the manure generated. This includes manure that is transferred or exported, as described in the Nutrient Management Plan. If export goals are not met, the CAFO can find other sources for the export of manure or construct additional storage. These are the only regulations regarding the export of manure that falls within the scope of this permit action.

Comment regarding ammonia emissions and deposits to waters of the state.

Response: There are no state requirements for air emissions for Class 1B CAFO.

Comment about other permitted activities on-site must be evaluated in total.

Response: Activities that are required to obtain operating permit coverage at any given site are evaluated independently for compliance with the Missouri Clean Water Law and the Missouri Clean Water Commission's Regulations for that activity. The MOG822236 issued to Valley Oaks Steak Company, LLC for meat processing and the MOG010000 CAFO permit Valley Oaks Steak Company, LLC has applied for are both no-discharge general permits and protective of water quality. These permits authorize different activities and are separate permitting actions.

Regardless of the permit(s) issued to these facilities, the effluent limitations and other requirements would be the same as in the two separate general permits.

Comment that the Department's geohydrologic evaluation does not support the issuance of the proposed general permit.

Response: Geohydrologic evaluations are required for the construction of an earthen storage basin. The Valley Oaks Steak Company, LLC CAFO does not propose to construct an earthen storage basin; therefore, a geohydrologic evaluation is not required as part of Valley Oaks' application review. A geohydrologic evaluation was conducted in response to a construction permit application for an earthen storage basin for the meat processing facility. This is a separate permit action and is currently under review by the Water Protection Program's Engineering Section staff.

Comment about water quality concerns based on the proposed NMP.

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. These records include nitrogen applied from other sources, total applied plant available nitrogen (PAN) from all sources, and the difference between total PAN from all sources and planned crop nitrogen requirement. For nitrogen-based applications, the total PAN applied cannot exceed the crops' nitrogen requirement by more than 10 percent.

Compliance with the terms of the NMP after issuance of a permit is reviewed during inspections.

Each field in the NMP must have a phosphorus (P) loss risk assessment. This can be the soil test P rating or a P-index rating. Nitrogen-based applications are allowed if soil test phosphorus (P) levels are low, medium or optimum, or if 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 phosphorus is beneficial for soil health.

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

There is no regulatory requirement for what source or method is to be used to derive expected yield goals. The documentation used for expected yield goals is not required to be included in the NMP or submitted with an operating permit application. Pasture and hay land are different land uses and the nitrogen requirement is calculated differently for each.

There are no regulatory requirements for the distance manure can be hauled or to identify the method of transport. Any discharge of manure resulting from the transporting of manure is unlawful and potentially subject to compliance and enforcement actions.

There are requirements for the stockpiling of manure at land application areas in the permit. Method of stockpiling of manure is not required to be addressed in the NMP or submitted with on operating permit application.

As a result of public comment, the Department requested clarification from the applicant on spreadable acres in the “Terms of the NMP Attachment A.” The consultants for Valley Oaks Steak Company, LLC confirmed the acreages listed were a mixture of spreadable acres and total acres. In response to comment the Department revised the spreadable acres listed in Attachment A to match the spreadable acres in Table F-1-1 of the NMP. In addition the spreadable acres for Field 7A was change from 139 to 13.9 to fix a typographical error.

The slope range of some of the soil map units identified as the predominant soil type for portions of the land application areas does include slopes greater than 20 percent. Soil map units are designed to reflect soil and landscape characteristics that occur within that soil map unit wherever it is mapped across the state. With respect to slopes, the entire slope range of a soil map unit may or may not be present in an individual area of that soil map unit. The Valley Oaks Steak Company, LLC NMP addresses the issue and states “manure will not be applied on land with a slope greater than 20 percent.” Application on land with slopes greater than 20 percent will be subject to compliance and enforcement action.

There is no regulatory requirement for the application of manure by injection or incorporation or to be addressed in the NMP. The option to incorporate and methods used to do so are at the discretion of the CAFO.

Comment about the impacts of the whitefly on Powell Gardens.

Response: This issue does not fall within the scope of this permit action.

Comment that a general permit is not appropriate and does not take into account the difference of pre-expansion and post-expansion conditions.

Response: There is no regulatory requirement to compare the pre-expansion conditions to the proposed expansion conditions of a CAFO facility. New or modified operating permits are issued based on conditions that are disclosed in the permit application for the new or modified permit. Valley Oaks Steak Company, LLC has been operating as a Class II Animal Feeding Operation (AFO) which is not subject to CAFO regulations. Likewise, there is no regulatory requirement that limits the size of an expansion or amount of manure, litter, or process wastewater that is generated by the CAFO.

Regulation in 10 CSR 20-6.010(13)(A)2 pertains to how general permits are to be written to regulate a category of point sources. The MOG010000 general permit is written for CAFO with

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animal types including beef cattle, dairy cattle, swine, broilers, laying hens, turkeys, sheep, goats, horses, and ducks. It is also written for operations with wet or dry manure handling systems. No discharge of manure, litter, or process wastewater is allowed unless authorized by the permit. The requirements for inspections, recordkeeping, production and land application areas, and manure transfers are the same in all CAFO permits. This general permit is available to any Class I CAFO that meets the applicability criteria in the permit.

The Department has reviewed the Valley Oaks Steak Company, LLC application for a general operating permit and determined it meets the applicability criteria of the MOG010000 general permit.

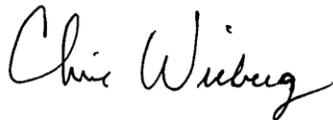
Conclusion

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 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



Chris Wieberg
Director

CW:gcs

c: Valley Oaks Steak Company, LLC