

6. The Valley Oaks CAFO consists of a dry litter beef cattle operation comprised of six production barns and two stack sheds. Mortalities from the facility are rendered.

7. The Valley Oaks CAFO is authorized to contain no more than 6,999 animals.

8. The Valley Oaks CAFO will generate 111,134 tons per year of dry process waste manure.

9. The six production buildings at the Valley Oaks CAFO will have concrete floors with two-foot stem walls, and cattle will be kept inside these buildings at all times.

10. The Valley Oaks CAFO is required by 10 CSR 20-6.300(5)(A) to develop and implement a Nutrient Management Plan ("NMP").

11. The Valley Oaks CAFO NMP is required by 10 CSR 6.300(3)(G) to comply with DNR's Nutrient Management Technical Standard.

12. The Valley Oaks CAFO NMP identifies 245 different fields where it proposes to conduct land application of manure generated at the CAFO. These 245 land application fields contain a total of approximately 3,250 spreadable acres.

13. The real property containing the fields identified in the Valley Oaks CAFO NMP as Field 7A, 7B, 7C, 8A, 8B, 9A, 10A, 11A, 12A, 12B, 13A, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D, 17A, 17B, 18A, 18B, 18C, 18D, 19A, 19B, 20A, 20B, 21A, 22A, 23A, and 23B is owned by the Marie Gellerstedt Trust.

14. With regard to the real property owned by the Gellerstedt Trust, there are approximately 443 spreadable acres.

15. As the owner of the foregoing real property, the Gellerstedt Trust have not and does not consent to the placement of any wastes generated by the Valley Oaks CAFO on its property.

16. The geologic setting of the Valley Oaks CAFO and all the land application sites included in its NMP is in the Kansas City Group, which is comprised of cyclic deposits of limestone and shale, with some amounts of sandstone. These units are typically karstified and contain varying densities of sinkholes, caves, and other karst features.

17. The Missouri Geological Survey is a component of Respondent-DNR.

18. The location of the Valley Oaks CAFO is bisected by an unnamed tributary/first order stream to the East Branch of Crawford Creek.

COUNT I

19. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 18.

20. The Permit Application (Form W), in the "Instructions," states that the information in section 1.2 must "Provide the name of the legal entity that owns or operates the CAFO facility."

21. The Permit Application (Form W), dated December 19, 2017, in section 1.2 states "Country Club Homes, LLC" is the "Owner" of the facility.

22. The Permit Application (Form W), in the "Instructions," states that "All corporate entities are to be listed with the Secretary of State's web site."

23. 10 CSR 20-6.010(3) "Continuing Authority" requires, *inter alia*, that "All applicants for construction permits or

operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made."

24. Permit MOG010872, dated June 15, 2018, was issued by Respondent-DNR to "Country Club Homes, LLC."

25. There is no legal entity described as "Country Club Homes, LLC" listed on the Missouri Secretary of State's website as being a lawfully created Missouri limited liability company.

26. According to the Warranty Deed, recorded at Book 3651, Page 148 in the Johnson County, Missouri Recorder of Deeds Office, on November 17, 2017, an entity called "Countryclub Homes, LLC" sold the real property where the Valley Oaks CAFO is to be located to "Valley Oaks Real Estate, LLC."

27. As of the date of the Permit Application - December 19, 2017 - "Country Club Homes, LLC" did not own the real property where the Valley Oaks CAFO is to be located.

28. The Permit Application (Form W) contains false statements in violation of § 644.076.2, RSMo because: (a) there is no lawful legal entity registered with the Missouri Secretary of State as "Country Club Homes, LLC;" and (b) "Country Club Homes, LLC" did not own the real property where the Valley Oaks CAFO was to be located.

29. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because (a) "Country Club Homes, LLC" is a nonexistent legal entity; (b) "Country Club Homes, LLC" does not own the real property where the Valley Oaks CAFO is to be located; and (c) "Country Club Homes, LLC," as a nonexistent

entity and a non-property owner, cannot serve as a lawful Continuing Authority for the Valley Oaks CAFO as required by 10 CSR 20-6.010(3).

COUNT II

30. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 29.

31. In its NMP, the Valley Oaks CAFO affirmatively states that its wastes will be land applied on Fields 7A, 7B, 7C, 8A, 8B, 9A, 10A, 11A, 12A, 12B, 13A, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D, 17A, 17B, 18A, 18B, 18C, 18D, 19A, 19B, 20A, 20B, 21A, 22A, 23A, and 23B.

32. The Valley Oaks CAFO NMP contains false statements in violation of § 644.076.2, RSMo because the Valley Oaks CAFO does not have permission from the property owner to land apply wastes at fields 7A, 7B, 7C, 8A, 8B, 9A, 10A, 11A, 12A, 12B, 13A, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D, 17A, 17B, 18A, 18B, 18C, 18D, 19A, 19B, 20A, 20B, 21A, 22A, 23A, and 23B.

33. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because such Permit is predicated, in part, on the false statements in the NMP regarding land application occurring at Fields 7A, 7B, 7C, 8A, 8B, 9A, 10A, 11A, 12A, 12B, 13A, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D, 17A, 17B, 18A, 18B, 18C, 18D, 19A, 19B, 20A, 20B, 21A, 22A, 23A, and 23B.

COUNT III

34. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 33.

35. The Valley Oaks CAFO NMP is deficient and fails to comply with the Nutrient Management Technical Standard because the NMP fails to identify a sufficient amount of spreadable acres to land apply the wastes generated at the CAFO because the Valley Oaks CAFO lacks permission from the property owner to land apply CAFO wastes at fields 7A, 7B, 7C, 8A, 8B, 9A, 10A, 11A, 12A, 12B, 13A, 14A, 14B, 14C, 14D, 15A, 15B, 15C, 15D, 16A, 16B, 16C, 16D, 17A, 17B, 18A, 18B, 18C, 18D, 19A, 19B, 20A, 20B, 21A, 22A, 23A, and 23B.

36. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the NMP is deficient and fails to identify a sufficient amount of spreadable acres to land apply the wastes generated by the Valley Oaks CAFO.

COUNT IV

37. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 36.

38. The Missouri Geological Survey is required by 10 CSR 20-8.300(12) to make a determination of whether a groundwater monitoring system is required at the Valley Oaks CAFO and the identified land application areas.

39. There is no information in the administrative record that the Missouri Geological Survey made the determination required by 10 CSR 20-8.300(12) concerning the Valley Oaks CAFO or the identified land application areas.

40. On March 14, 2018, the Missouri Geological Survey conducted a review concerning a small wastewater lagoon and 1.4 acre land application area, however, this geohydrologic

investigation did not encompass the location of the proposed Valley Oaks CAFO and its land application fields.

41. Because of its geologic setting in the Kansas City Group, the Valley Oaks CAFO and the land application areas present a significant risk to contaminate the regional drinking water aquifer due to the soil permeability, the site geology, and the distance to the aquifer.

42. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because DNR failed to comply with 10 CSR 20-8.300(12) by not making any determination concerning the need for a groundwater monitoring system for the Valley Oaks CAFO and the land application areas.

COUNT V

43. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 42.

44. 10 CSR 20-8.300(4)(A) requires that "Manure storage structures, confinement buildings, open lots, composting pads, and other manure storage areas in the production area shall be protected from inundation or damage due to the one hundred - (100-) year flood."

45. The Federal Emergency Management Agency ("FEMA") has issued a Flood Insurance rate Map ("FIRM") for the immediate vicinity of the Valley Oaks CAFO in Johnson County, Missouri.

46. The FEMA 100-year flood inundation area, or Zone A on the FIRM, in the immediate vicinity of the location of the Valley Oaks CAFO intersects structures in the production area at the Valley Oaks CAFO.

47. Respondent-DNR improperly issued Permit MOG010872 to Country Club Homes, LLC because structures in the production area of the Valley Oaks CAFO are located in the FEMA 100-year flood inundation area, Zone A.

COUNT VI

48. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 47.

49. Veterinary pharmaceuticals are chemical drugs administered to domestic animals to treat diseases, prevent infections, increase weight gain, or improve feed efficiency.

50. Common veterinary pharmaceuticals include antibiotics, anti-parasitics, anti-inflammatory medicines, anesthetics, pain relievers, and specialized products used to manage animal reproductive or metabolic conditions.

51. After being administered to livestock, these pharmaceuticals are typically absorbed through animals' digestive and circulatory systems and discharged in waste from the animals' excretory system.

52. Veterinary pharmaceuticals are introduced into the environment through discharge, handling, storage, and disposal of animal waste.

53. Through land application of animal waste as an organic fertilizer, these residual veterinary pharmaceuticals and antibiotic-resistant microorganisms enter into soil and water and can influence aquatic ecosystems and accumulate in food crops.

54. In soil, residual veterinary pharmaceuticals can be absorbed by plants and accumulated in soil fauna. The uptake and accumulation, however, may vary with organism species and pharmaceutical compounds.

55. The Valley Oaks CAFO will administer veterinary pharmaceuticals to the cattle housed at its CAFO facility.

56. The residual veterinary pharmaceuticals present in the manure and waste from the Valley Oaks CAFO constitutes a "water contaminant," as defined by § 644.016(25), RSMo.

57. The land application of manure and waste containing residual veterinary pharmaceuticals from the Valley Oaks CAFO will likely cause "pollution" to "waters of the State," as such terms are defined at § 644.016(17) and (27), RSMo.

58. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because such permit allows the land application of wastes containing residual veterinary pharmaceuticals which will result in runoff and subsurface seepage causing pollution of waters of the State in violation of the Missouri Clean Water Law, Chapter 644, RSMo.

COUNT VII

59. Petitioner realleges and incorporates by reference the allegations in paragraphs 1 to 58.

60. 10 CSR 20-6.300(3) "Neighbor Notice Requirements," requires "Prior to filing an application for an operating permit with the department for a new or expanding Class I concentrated animal feeding operation, the following information shall be provided [by the applicant] by way of a letter to all the parties listed in paragraph (3)(C)2. of this section: ..."

61. Neighbor Notice letters were not sent by the permit applicant to all the parties listed in 10 CSR 20-6.300(3)(C)2 prior to December 19, 2017, as specifically required by 10 CSR 20-6.300(3).

62. Certified Mail Receipts from the U. S. Postal Service conclusively show that the required Neighbor Notice letters were not mailed until January 30, 2018.

63. At the time of mailing on January 30, 2018, the CAFO application has already been under DNR review for approximately six weeks.

64. Persons to whom the January 30, 2018 Neighbor Notice letters were sent did not receive such letters until early February 2018.

65. The permit applicant's failure to comply with 10 CSR 20-6.300(3) to timely provide the required Neighbor Notice letters prior to the submission of the CAFO permit application, adversely affected Petitioner, its members, and supporters by effectively denying their legal rights to public notice and public participation and hindering their ability to timely organize to oppose the permit application.

66. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the permit applicant failed to timely provide Neighbor Notice as required by 10 CSR 20-6.300(3) in violation of the Missouri Clean Water Law, Chapter 644, RSMo.

COUNT VIII

67. Petitioner realleges and incorporates the allegations in paragraphs 1 to 66.

68. Standard Requirement 2.a in Permit MOG010872 states, "There shall be no discharge of manure, litter, process wastewater or mortality by-products . . . from the production area."

69. Standard requirement 10.a(3) in Permit MOG010872 requires that "clean water shall be diverted from the production area."

70. The production barns at the Valley Oaks CAFO have "stem walls," which mean there is not a continuous, solid wall separating the production area where the animals are housed from the area outside the production area, but rather, there are approximately 10" openings running along the base of all the stem walls inside the production buildings.

71. The attached photographs show the "stem walls" at the production areas at the Valley Oaks CAFO:



Photograph 1. Stem Walls at Valley Oaks CAFO.



Photograph 2. Stem Walls at Valley Oaks CAFO.

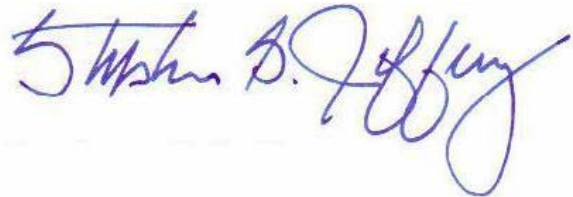
71. The Valley Oaks CAFO fails to comply with Standard Requirements 2.a and 10.a(3) in Permit MOG010872 because the stem walls allow manure, litter and process wastewater to flow out of the production areas.

72. Respondent-DNR improperly issued Permit MOG01872 to Country Club Homes, LLC because the Valley Oaks CAFO fails to comply with Standard Requirements 2.a and 10.a(3) in Permit MOG010872 because the stem walls allow manure, litter and process wastewater to flow out of the production areas in violation of the Missouri Clean Water Law, Chapter 644, RSMo.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the Administrative Hearing Commission sustain its appeal and find that Respondent-DNR failed to comply with existing law and regulations in issuing Permit MOG010872 to Country Club Homes, LLC, and recommend that the Missouri Clean Water Commission reverse the June 15, 2018 decision issuing Permit MOG0108782 to Country Club Homes, LLC.

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