Before the
Administrative Hearing Commission
State of Missouri

IN RE COUNTRY CLUB HOMES, LLC,)
Permit No. MOG010872) No. 18-0498
)

RECOMMENDED DECISION

The Administrative Hearing Commission ("AHC") recommends that the Missouri Clean Water Commission ("CWC") reverse the Department of Natural Resources' ("Department") decision to issue Permit No. MOG010872 (the permit) to County Club Homes, LLC, [sic] and subsequently to Valley Oaks Real Estate, LLC, ("Valley Oaks") to operate a Class IB concentrated animal feeding operation ("CAFO").

Procedure

On June 25, 2018, Lone Jack Neighbors for Responsible Agriculture, LLC (Lone Jack) filed a complaint appealing the Department's decision to issue the Permit. On June 26, Lone Jack filed an amended complaint. On July 2, 2018, Valley Oaks filed a motion to intervene, which we granted by order dated July 5, 2018. On July 2, 2018, Valley Oaks also filed its answer to the amended complaint. On August 2, 2018, the Department filed a motion to file its answer to the amended complaint out of time and its answer. By order dated August 3, 2018 we granted the motion. On August 7, 2018, with our leave, Valley Oaks filed an amended answer to the amended complaint. By letter dated August 9, 2018, the Department reissued the permit in the name of Valley Oaks Real Estate, LLC. On August 20, 2018, Lone Jack filed a motion for

leave to file an amended complaint. On August 21, 2018, Valley Oaks filed a response. By order dated August 22, 2018, we granted Lone Jack leave to file its amended complaint "solely on the issue of the Department of Natural Resources' action of August 9, 2018." On August 24, 2018, Lone Jack filed its second amended complaint. On August 27, 2018, Valley Oaks filed an answer and motion to strike as to the second amended complaint.

On June 26, 2018, Lone Jack filed a motion for stay, and on June 27, 2018, an amended motion for stay. On July 9, 2018, Valley Oaks filed suggestions in opposition. On July 9, 2018, we held a hearing on the motion. By order dated July 26, 2018, we granted the motion for stay. On August 6, 2018, the Department filed a motion to reconsider our stay order, and on August 7, 2018, Valley Oaks also filed a motion to reconsider. On August 8, 2018, Lone Jack filed suggestions in opposition to the motion to reconsider the stay order. By order dated August 14, 2018, we reconsidered our stay order and declined to lift or vacate it. The Department filed for an extraordinary writ in the Cole County Circuit Court to overturn the stay. The writ remains under review by the court.

On August 7, 2018, Valley Oaks filed a motion to dismiss Lone Jack's appeal based on lack of standing. On August 8, 2018, Lone Jack filed suggestions in opposition to the motion, and by order dated August 14, 2018, we denied the motion to dismiss. On August 14, 2018, Valley Oaks filed a motion to hold separate hearings in this case and Case No. 18-0501. On August 16, 2018, the Petitioners in Case No. 18-0501 filed suggestions in opposition to the motion. By order dated August 21, 2018, because of the substantial overlap of issues and potential witnesses, we denied the motion.

On August 27-28, 2018, we held a hearing. Stephen G. Jeffery, with Jeffery Law Group, LLC, represented Lone Jack. Assistant Attorneys General Jennifer Hernandez and Shawna Bligh represented the Department. Jennifer Griffin and Doug Nelson, with Lathrop Gage, represented

Valley Oaks.[1] The matter became ready for our decision on October 10, 2018, the date the last written argument was filed.

Findings of Fact

1. Lone Jack is a Missouri limited liability company registered and in good standing with the Missouri Secretary of State.

2. Lone Jack, its members, and its supporters reside in the vicinity of the Valley Oaks CAFO and fields where manure generated by the CAFO may be land applied.

3. Karen Lux and Carolyn Wilkinson are members of Lone Jack who live in the vicinity of the CAFO Property.

4. Lux resides approximately one mile from the facility. She has been and will be adversely affected by the expansion of Valley Oaks. Lux' mother, Carolyn Wilkinson, owns property within the area for which neighbor notice is required. Lux and Wilkinson are adversely affected by the Department's decision to issue the permit.

5. Countryclub Homes, LLC, is Missouri limited liability company registered and in good standing with the Missouri Secretary of State. David Ward is the sole member of Countryclub Homes, LLC.

6. Ward, through business entities owned by him, began operating an animal feeding operation ("AFO") on the site of the proposed Valley Oaks CAFO in Johnson County, Missouri, in September 2016.

7. The AFO was comprised of approximately 900 head of cattle. No permit is required for a facility holding up to 1,000 beef cattle.

[1] Petitioners in Case No. 18-0501 were represented by Charles W. Hatfield, Aimee Davenport and Matthew D. Moderson, with Stinson Leonard Street.

8. On December 19, 2017, Ward submitted a Permit Application (Form W) to the Department for a proposed CAFO to be located on the property comprising the AFO in Johnson County, Missouri. ("the facility" or "Valley Oaks").

9. Greg Caldwell reviewed the permit application. He has been employed by the Department for over 30 years. Caldwell testified on behalf of the Department at the hearing.

10. "Country Club Homes, LLC" was listed on the application as both the owner and the continuing authority that is responsible for the operation, maintenance, and modernization of the facility to which the permit is issued.

11. A "Certificate of No Record," dated June 27, 2018, from the Missouri Secretary of State indicates than no entity named "Country Club Homes, LLC," with the address 1120 NE Eagle Ridge Blvd., Grain Valley, Mo 64029 exists. Ex. 7.

12. On June 15, 2018, DNR issued Permit No. MOG010872 to "County Club Homes, LLC, 1120 NE Eagle Ridge Blvd., Grain Valley, MO 64029" [sic] for the operation of a Class IB CAF0. A Class IB CAFO requires a permit from the Department.

13. The holder of a Class IB CAFO permit may hold up to 6,999 animal units in its facility. One cow is equal to one animal unit.

14. As of June 15, 2018, there were approximately 900 head of cattle at the facility, and since that time, the facility has added 1,000 head of cattle. Ward plans to add 2,600 additional head of cattle to the Valley Oaks CAFO by the end of 2018.

15. With the permit application, a narrative project summary was submitted describing a facility with six confinement barns and two manure storage sheds. Valley Oaks projects that, when operating at full capacity, the allotted capacity of 6,999 beef cattle raised on the facility would generate approximately 111,134 tons of manure and urine on an annual basis.

16. Valley Oaks indicated in its application that it would store the process waste in the animal confinement barns, as well as the manure storage sheds.

17. In its application materials, Valley Oaks projected that it would dispose of approximately 70% of that process waste by land application (under the Nutrient Management Plan), and approximately 30% of that waste by exporting it from the site.

18. Some of the fields designated in the nutrient management plan are owned by the Marie Gellerstedt Trust. These fields are leased by David and Danny Barker. Marie Gellerstedt submitted an affidavit stating that she did not wish to have any manure from Valley Oaks applied to the Trust property. The affidavit asserts that the tenant does not have the legal authority or the consent of the Trust to accept waste manure from Valley Oaks.

19. At the hearing on August 27, 2018, Caldwell testified that he reviewed the Secretary of State's website and found information for a "Countryclub Homes, LLC," so he assumed that "Country Club Homes, LLC" was a typographical error. Tr. at 44-45.

20. Caldwell did not communicate with the permit applicant or the engineer concerning the purported typographical error.

21. The permit application in block 1.2 lists "Country Club Homes LLC" as both owner and continuing authority. Ex. A.

22. The permit, dated June 15, 2018, was addressed to "Country Club Homes, LLC," but issued in the name of "County Club Homes, LLC." Ex I.

23. Ward submitted a Form W to the Department requesting a transfer of the Permit from Country Club Homes, LLC, to Valley Oaks Real Estate, LLC.

24. The request for transfer was signed by David L. Ward purporting to be a member of Country Club Homes, LLC.

25. By letter dated August 9, 2018, the Department purportedly issued a modified permit "for ownership transfer and facility name change." Ex.103. the modified permit, dated August 8, 2018, is issued in the name of Valley Oaks Real Estate, LLC.

26. The neighbor notice letter prepared by Valley Oaks was dated January 30, 2018.

27. The U.S. Postal Service certified mail receipts provided to the Department as proof of mailing of neighbor notice letters were all dated January 30, 2018.

28. The Department has in the past conducted a geohydrological investigation for a facility that had an earthen basin, but that investigation was conducted pursuant to 10 CSR 20-8.300(6), and did not concern the Valley Oaks CAFO.

29. Thomas Aley, an expert in the fields of geology and forestry, testified on behalf of Lone Jack. He visited the area near the Valley Oaks CAFO site and observed old wells, rock outcrops, and the physical plant.

30. Aley's understanding was that the Missouri Geological Survey did not make any determination whether a groundwater monitoring program was necessary at the site.

31. Aley was familiar with karst topography, and opined that the geologic setting where the Valley Oaks CAFO is located is in karst limestone and there is a shallow water table present.

32. Aley testified concerning his professional opinion that the Valley Oaks CAFO will have an impact on surface or groundwater because "... as planned with the quantity of wood chips, my estimate is at least two-thirds of the liquid generated will flow off the slab and into the environment." Tr. at 258.

33. Aley testified concerning his professional opinion that the Valley Oaks CAFO has the potential to contaminate a drinking water aquifer because "It is karst. The water -- much of the recharge in karst aquifers occurs where you have streams that run over the limestone units. And the streams are going to run over limestone units. You will also have infiltration from the surface

and you get a lot of the liquid waste running over the surface so it has the potential to infiltrate." Tr. at 260-261.

34. Lone Jack submitted the deposition of Ivan Cooper, a Missouri licensed professional engineer and a Board-certified environmental engineer with 47 years of professional experience in water quality issues.

35. Caldwell testified that the Department had never required an applicant for a no-discharge permit to submit information regarding veterinary drug usages; however, Lone Jack introduced a letter dated July 24, 2013 from the Department to an applicant for a wastewater treatment facility requesting information about pharmaceuticals administered to horses.

36. Cooper testified that he had reviewed information on the Missouri DNR website, the permit application, and the permit for the Valley Oaks CAFO. Cooper also testified regarding his understanding of the Valley Oaks CAFO: "The manure and waste is somewhere between 3,000 and 7,000 head of cattle would be stored as a dry material and dispersed on nearby farms," noting that "land application of animal waste typically do not have any wastewater treatment." Ex. 100-A at 32-33.

37. Cooper testified that "Pharmaceutical residues are those constituents of applied pharmaceuticals that would be excreted by animals. And the variety of pharmaceuticals that would be excreted would depend on how much each animal would uptake. And the residuals would be those either parent or metabolic compounds that would be excreted from the amount that an animal would not use or absorb." *Id.* at 28.

38. The Department received around 1,400 public comments, primarily in opposition to Valley Oaks' permit application. Caldwell reviewed all of the comments and prepared the Department's responses to the comments.

Conclusions of Law

We have jurisdiction to conduct the hearing on appeal from a clean water permit and recommend a decision to the CWC under contested case procedure. Section 621.250.[2] In all contested case administrative appeals heard by the AHC pursuant to § 621.250, the burden of proof is on the Department of Natural Resources to demonstrate the lawfulness of the finding, order, decision or assessment being appealed. Section 640.012.

Standing

Valley Oaks again raises the issue of Lone Jack's standing to bring this action. It argues that Lone Jack is not the permit applicant and thus lacks standing to appeal anything regarding the permit. As we noted in our order denying Valley Oaks' motion to dismiss, this argument finds support in *Craven v. State ex rel. Premium Standard Farms, Inc.*, 19 S.W.3d 160 (Mo. App. W.D. 2000). The court in that case found that a third party did not have standing to challenge permits issued by the Clean Water Commission (CWC) because the language of § 644.051.6 allowed only the Intervenor to appeal a permitting decision. In 2000, however, § 644.051.6 was amended to give the authority to grant or deny permits to the Director of the Department. The Supreme Court, in *Missouri Coalition for the Environment v. Herrmann*, 142 S.W.3d 700 (Mo. banc 2004), overruled *Craven* and found that because the Director of the Department issues the permits, § 640.010.1 was the applicable statutory provision authorizing appeals. "Section 644.051.6 does not limit the right of appeal to the commission solely to those denied a permit, and 10 CSR 20–6.020(5)(C) [authorizing appeals by those adversely affected] is not in conflict. . . . Therefore, the commission has subject matter jurisdiction to hear the coalition's appeal." *Id. at* 702. Lone Jack, through the testimony of its members, has

[2] Statutory references are to RSMo 2016.

demonstrated that it is adversely affected by the Department's decision to issue the permit. We therefore conclude that Lone Jack has standing to appeal the Director's decision.

Evidentiary Rulings

At the hearing, we took a number of objections with the case. Valley Oaks and the Department objected to our consideration of evidence presented at the stay hearing because the purpose for which it was presented – threatened harm – was an operational concern, and therefore not relevant to the sole issue in this case, regulatory permitting requirements. We are able to take official notice of the entire content of the case file; as a result, the objections are overruled at this time. However, with the exception of certain background information and evidence relating to parties and standing, all the evidence reflected in our findings of fact was taken from the August 27-28 hearing.

In addition, the Department filed a motion *in limine* to exclude testimony regarding geological formations underlying the permitted facility; any evidence related to groundwater monitoring systems at the permitted facility, or land application areas potentially utilized by the permitted facility; any evidence or testimony regarding the administration of veterinary drugs to animals at the facility and the potential discharge of such pharmaceutical residue in manure through land application; and evidence or testimony regarding non-point source runoff from the permitted facility or land application areas or storm water runoff from fresh water retention ponds located at the permitted facility. We denied the motion *in limine* on the first day of the hearing, but permitted a standing objection to evidence and testimony on these topics. Our conclusions of law below reflect our finding that these topics are largely irrelevant. Nonetheless, we include certain summary information in our findings of fact as background for a better understanding of the facility and its operations, and the Petitioners' arguments.

Plea agreements in two federal criminal cases against David L. Ward were presented by Lone Jack as relevant to Ward's credibility as a witness. Both Valley Oaks and the Department objected. Because Ward did not testify at the hearing, we sustain the objection. All other objections and motions not specifically ruled upon elsewhere, including Valley Oaks' motion to strike portions of Lone Jack's second amended complaint, are overruled at this time.

Counts I & VIII – Continuing Authority

Counts I and VIII of Lone Jack's second amended complaint allege that in its application, Valley Oaks failed to furnish proof 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 [was] made" as is required by 10 CSR 20-6.010(3)(A). In *In the Matter of Trenton Farms Re, LLC v. Missouri Dep't of Natural Resources*, the Court of Appeals provided guidance as to what this regulation requires, which is simply to identify the entity that will serve the function. 504 S.W.3d 157, 166 (Mo. App. W.D. 2016). Valley Oaks failed in this simple task, and the Department failed to ask it to correct the mistake pursuant to 10 CSR 20-6.300.

In his testimony, Caldwell explained that in his review process, he used the search function of the Secretary of State's web site to look for the named entity, Country Club Homes, LLC, and found among the results "Countryclub Homes, LLC." Because this entity was affiliated with Ward, the signatory to the application, Caldwell assumed this was the correct entity and that it was adequately identified. But the law does not allow for such an assumption. Section 347.020 requires that the name of an LLC "must be distinguishable upon the records of the secretary from the name of any corporation, limited liability company [or other registered business entity]." In other words, a difference of one word – or one space – distinguishes one entity from another. *See, Shipley v. Cates*, 200 S.W.3d 529, 538 (Mo. banc 2006). The statute

further provides that an LLC's name, as set forth in its articles of organization, "shall be the name under which the limited liability company transacts business in this state unless [it registers another name as a fictitious name]." In other words, spelling counts.

The entity identified in the application to serve the function of the continuing authority simply did not exist in the records of the Secretary of State. Caldwell's discovery of a similarly named entity is of no import – even if he was correct in assuming that the similarly named entity was the correct one – because he did not have the authority to change or make corrections to the application. The correct course of action would have been to call attention to the mistake to the applicant or its engineer. *See*, 10 CSR 20-6.300(2)(E)4. Instead, the Department granted a permit based on a deficient application. Compounding the error, the permit issued by the Department on June 15, 2018 was issued in the name of "County Club Homes, LLC," a name so obviously wrong that none of the parties bothered to submit evidence as to whether an entity by that name exists in the records of the Secretary of State.

During the pendency of the case before the AHC, the Department re-issued Permit MOG010872 to "Valley Oaks Real Estate, LLC" as owner and continuing authority. The AHC permitted Lone Jack to amend its complaint to address this change in circumstance. Lone Jack argues that the rule authorizing such a transfer requires "an application to transfer signed by the existing owner and/or continuing authority and the new owner and/or continuing authority." 10 CSR 20-6.010(11)(A). For the Department, Caldwell testified at the hearing that if the Department discovers a typographical error, then it has the option of an "internal modification." Tr. at 145-46. Authority for such a modification may be found in § 644.052.8. This section refers to "name changes, address changes, or other nonsubstantive changes to the operating permit," and prescribes a fee. But even assuming that Valley Oaks intended to apply for the permit in the name of Countryclub Homes, LLC, the change made by the Department is neither a name

change nor nonsubstantive. "Country Club Homes, LLC," a non-existent entity, is listed as both owner and continuing authority on the Form W application. The permit issued on August 9, 2018 was issued to "Valley Oaks Real Estate, LLC," a completely different entity. We agree with Lone Jack that this was a purported *transfer* of the permit, and because no one can sign for a non-existent entity, the transfer was ineffective. In any case, for the reasons stated herein and in the companion case, 18-0501, we have found that the permit was issued unlawfully, and the transfer of a void instrument to a new owner cannot revive it. We conclude that the permit was issued unlawfully because it failed to identify a continuing authority as required by 10 CSR 20-6.010(3), made applicable to a Class IB operating permit by 10 CSR 20-6.300(3)(A).

Counts II & III – Gellerstedt Property

10 CSR 20-6.300(2)(E)2.E requires CAFO applicants to submit a proposed nutrient management plan as part of their application materials. Included in Valley Oaks' nutrient management plan were plans to land apply manure on certain fields owned by the Marie Gellerstedt Trust. Gellerstedt submitted an affidavit stating that she did not wish to have any manure from Valley Oaks applied to the Trust property. Lone Jack argues that if Valley Oaks is unable to use this land, its nutrient management plan fails to account for the amount of manure calculated to be disposed of there.

First, there was evidence presented that the land was under lease to another for farming purposes. Without a copy of the lease document or other evidence, we are unable to determine whether Gellerstedt retained the right to prohibit the use of certain fertilizers on her land. Second, the nutrient management plan is only required to account for land owned by or under the control of the CAFO owner. The Gellerstedt property is not owned by or under the operational control of Valley Oaks. Finally, Lone Jack did not raise this argument in its briefing, and in the absence of compelling evidence, we consider these counts to be abandoned.

Count IV – Groundwater Monitoring

10 CSR 20-8.300(12) requires the Missouri Geological Survey to determine whether a groundwater monitoring program must be implemented at a CAFO and identified land application areas. That section states a determination will be made "by the Missouri Geological Survey on a case-by-case basis and will be based on potential to contaminate a drinking water aquifer due to soil permeability, bedrock, distance to aquifer, etc." However, § 640.710, the statute upon which the regulation is based, allows the Department to require monitoring only when, "in the determination of the division of geology and land survey, **class IA concentrated animal feeding operation lagoons** are located in hydrologically sensitive areas where the quality of groundwater may be compromised." (emphasis added.) An administrative agency may not promulgate a regulation that is broader than the authorizing statute. *See Teague v. Mo. Gaming Comm'n,* 127 S.W.3d 679, 687 (Mo. App. W.D. 2003); *Westwood Country Club v. Director of Revenue*, 6 S.W.3d 885, 887 n.2 (Mo. banc 1999) ("The regulation of course cannot be broader than the statutory language"). Valley Oaks applied for a permit as a Class IB CAFO, and it is beyond the Department's statutory authority to apply 10 CSR 20-8.300(12) to an application in this class. A case-specific determination was therefore unnecessary, and the Department's decision to issue the permit was not unlawful on this basis.

Count V – Pharmaceutical Water Contaminants

Lone Jack introduced evidence and testimony – over objection – regarding the administration of veterinary drugs, and the potential discharge of pharmaceutical residue in manure, which may be land applied. It argues that the Department issued a permit to Valley Oaks in violation of the law because pharmaceutical residue would be, upon entering the waters of the state, a "water contaminant" as that term is defined in § 644.016(24). Section 644.051.1(1) makes it unlawful to "cause pollution of any waters of the state or to place or cause or permit to be placed

any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state." In other words, the Department itself, by issuing a permit that allows a "water contaminant" to be spread in the land application fields where it is reasonably certain to reach the waters of the state, has violated the clean water law.

We disagree. The only provision of the permitting laws concerning the evaluation of CAFO waste to be land applied by a CAFO is 10 CSR 20-6.300(3)(G)2.C. This regulation requires that "manure be analyzed a minimum of once annually for nitrogen and phosphorus content." Because the permitting process limits the Department's consideration of manure content to nitrogen and phosphorous, information regarding the use of veterinary pharmaceuticals or their presence in manure is – even if Lone Jack's conclusion that pharmaceutical residue is a water contaminant – an operational concern, subject to the Department's inspection and enforcement mechanisms.[3] It is outside the scope of what the Department may consider in making a permitting decision. We conclude that the Department's decision to issue the permit was not unlawful on this basis.

Count VI – Neighbor Notice

10 CSR 20-6.300(3)(C) requires that certain neighbors be notified of a proposed CAFO, and makes this neighbor notice a prerequisite to filing a permit application with the Department:

> 1. **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 way of a letter to all the parties listed in paragraph (3)(C)2 of this section:
>
> A. The number of animals designed for the operation;
>
> B. A brief summary of the waste handling plan and general layout of the operation;

[3] Lone Jack introduced a letter dated July 24, 2013 from the Department to an applicant requesting information about pharmaceuticals administered to horses. No further evidence regarding the purpose of this inquiry was brought forward, and the letter itself references permitting for a wastewater treatment facility. *See*, Ex. 111.

C. The location and number of acres of the operation;

D. Name, address, and telephone number of registered agent or owner;

E. Notice that the Department will accept written comments for a thirty- (30-) day period. The Department will accept written comments from the public for thirty (30) days after receipt of the operating permit application; and

F. The address of the Department office receiving comments.

2. The neighbor notice shall be provided to the following:

A. The Department's Water Protection Program;

B. The county governing body; and

C. All adjoining owners of property located within one and one-half (1 1/2) times the buffer distances specified in subsection (3)(B). Distances are to be measured from the nearest animal confinement building or wastewater storage structure to the adjoining property line.

3. The operating permit applicant shall submit to the Department proof the above notification has been sent. An acceptable form of proof includes copies of mail delivery confirmation receipts, return receipts, or other similar documentation.

(Emphasis added.) *See also* § 640.715.

Twenty-four delivery confirmation receipts, as well as a copy of the notice, were provided to the Department in connection with Valley Oaks' permit application. All 24 receipts were stamped as received for certified mailing by the postal service on January 30, 2018. The notice itself was dated January 30, 2018. The permit application that was reviewed and ultimately approved by the Department was filed by Valley Oaks on December 19, 2017. Caldwell testified on cross examination that neighbor notices are required to be provided prior to the submission of a permit application. The Department did not offer excuse, justification or authority for waiving this requirement. Darrick Steen, a former employee of the Department, testified that in his experience, if there had been residences that did not receive a neighbor notice, during his tenure, the Department would have called that to the applicant's attention and allowed

the error to be corrected. He did not offer an opinion as to what he thought should happen where, as here, the applicant skipped over the process entirely.

The timelines for review of permit applications set forth by the legislature in § 644.051 mandate a speedy review. We conclude that providing the required neighbor notices before, rather than during, the Department's review is essential to preserving the balance between the legislature's desire that the Department issue a timely and definitive decision and its mandate for a meaningful public participation process. Because Valley Oaks submitted its application before providing the required neighbor notices, the permit was issued unlawfully.

Count VII – Facility Design

Lone Jack alleges that the production barns at the Valley Oaks CAFO have "stem walls" such that 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. Additionally, at the hearing, features of the confinement barns were highlighted by its witnesses. For example, it was noted that the confinement areas have doors that allow for cattle and heavy equipment to enter and exit, and the barn roof is equipped with downspouts that direct water near to the gaps at the base of the stem walls. These features certainly make it more likely that cattle feces and urine intentionally stored in the confinement areas will make their way out of the confinement area and be washed with storm water into the waters of the state.

However, 10 CSR 20-6.300(2)(E) provides:

> 1. The Department will not examine the adequacy or efficiency of the structural, mechanical, or electrical components of the waste management systems, only adherence to rules and regulations. The issuance of permits will not include approval of such features.

The Valley Oaks application has the required seal and signature of an engineer, and his statement indicating the project was designed in accordance with 10 CSR 20-8.300 as a no-discharge

facility. The Department is not permitted to inquire further into the design. We conclude that the Department's decision to issue the permit was not unlawful on this basis.

Summary

The AHC recommends that the Missouri Clean Water Commission reverse the Department's decision to issue Permit No. MOG010872 because the applicant failed to identify a continuing authority in violation of 10 CSR 20-6.010(3)(A) and failed to provide neighbor notice prior to filing its application in violation of § 640.715 and 10 CSR 20-6.010(3)(C).

SO RECOMMENDED on October 23, 2018.

BRETT W. BERRI
Commissioner