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Governor



STATE OF NEVADA  
**STATE ENVIRONMENTAL COMMISSION**

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**COUNSEL**  
David Newton

**STAFF**  
[John B. Walker](#)  
Executive Secretary

[Robert Pearson](#)  
Recording Secretary

**Notice of Appeal Hearing**

**Date:** October 09, 2006

**To:** Bill Barrackman  
Mary Hachigiah Crater  
Bruce Crater  
Annabel Bell  
Annie Bell  
Chip Bell  
Curtis Stengel  
David Steele  
Christie Terraneo

**Subject: Appeal Hearing Notice: Beverly Hills Dairy (A.K. Coral Cay Trust) -- Permit # NVE2006504**

The State Environmental Commission (SEC) has received appeals from the nine above listed residents of Amargosa Valley, Nevada. The appeals pertain to a "Notice of Decision regarding Permit # NEV2006504" that was issued by the Nevada Division of Environmental Protection (NDEP) to the Beverly Hills Dairy on March 3, 2006.

According to NDEP, the above referenced permit authorizes the discharge of manure and process wastewater to groundwater via land application and irrigation in accordance with NDEP's approved Nutrient Management Plan (NMP) at the Beverly Hills Dairy in Amargosa Valley.

NDEP's notice states that "the discharge is limited to the more restrictive of the nitrogen and phosphorus agronomic rates of the crop to be grown [and] sufficient information has been provided, in accordance with Nevada Administrative Code (NAC) 445A.228 through NAC 445A.263, to assure the waters of the State will not be degraded from this operation and that public safety and health will be protected."

The appellants to this action have questioned the mass loading of pollutants on the aquifer, water quality standards, operations of the waste management systems, and other aspects of the [permit] applications, which are alleged to be administratively and technically incomplete. It is further alleged by the appellants that the applicable statutes and regulations relevant in this appeal include all statutes and regulations pertaining to water pollution control, air pollution control, and others that pertain to the

construction, operation and closure of a CAFO (Concentrated Animal Feeding Operation).

As noted in correspondence from SEC dated April 04, 2006 to the appellants, the SEC's Rules of Practice (see NAC 445B.8957) allow the Commission to "consolidate two or more proceedings if it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation." The SEC's Rules of Practice also allow the Commission (at a consolidated hearing) to determine the order in which the parties introduce evidence and present testimony.

The Commission's rules further provide that "if two or more parties have substantially similar interests and positions, the Commission may, at any time during the hearing, limit the number of witnesses who will be allowed to testify."

Accordingly, it is the Commission's intent to conduct a "Consolidated Appeal Hearing" in the matter of the Beverly Hills permit, **on October 30, 2006 beginning at 10:00 A. M.** The appeal hearing will be conducted through use of a video conference link between Carson City and Las Vegas. The hearing location in Carson City will be at the Office of the Attorney General, 2<sup>nd</sup> floor conference room located at 100 North Carson Street. The hearing location in Las Vegas will be at the Office of the Attorney General in the Grant Sawyer Building (Room 4500), located at 555 East Washington Ave.

**About The Appeal Hearing:**

To be considered a party in a contested case (i.e. an appeal hearing before the Commission) a party must comply with new requirements of Nevada Revised Statutes that were enacted by the 2005 Nevada Legislature. The statute in question (NRS 233B.127.47) now requires parties in contested cases to comply with the following conditions:

. . . , a person must not be admitted as a party to an administrative proceeding in a contested case involving the grant, denial or renewal of a license **[permit]** unless he demonstrates to the satisfaction of the presiding hearing officer that:

(a) His financial situation is likely to be maintained or to improve as a direct result of the grant or renewal of the license; or

(b) His financial situation is likely to deteriorate as a direct result of the denial of the license or refusal to renew the license.

**Of note:** This statute defines a license to have the same meaning as a permit. The statute is online at the following location:

<http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec127>

These new requirements for being admitted as a party in a contested case will apply to the nine appellants who filed the appeal in the Beverly Hills Dairy case.

Of interest, in a recent contested case brought before the Commission (i.e. the Big Springs Appeal see: [http://www.sec.nv.gov/main/big\\_springs\\_appeal05.htm](http://www.sec.nv.gov/main/big_springs_appeal05.htm)) the SEC Appeal Panel sought formal clarification of NRS 233B.127 (4) from Nevada's Attorney General prior to considering the merits of the case.

On July 19, 2006 the Attorney General issued the opinion, which was accepted by the Commission and the opinion did uphold the "plain language" of the above referenced statute. (The AG's opinion is also online at: [http://www.sec.nv.gov/appeal\\_docs/ago\\_final.pdf](http://www.sec.nv.gov/appeal_docs/ago_final.pdf)).

Accordingly, before the SEC Appeal panel will consider arguments on the merits of the Beverly Hills appeal, the above referenced parties must present evidence regarding their "eligibility" to be admitted as parties to an administrative proceeding in a contested case as defined under NRS 233B.127 (4). In this regard, the subject matter of the above referenced Appeal Hearing scheduled on **October 30, 2006** will be limited to arguments of "standing" as stipulated under NRS 233B.127 (4). Accordingly, the Chairman of the Appeal's panel will limit arguments at the appeal hearing to the Motion to Dismiss Pursuant To NRS 233B.127 (4) that was filed on August 21, 2006 by the Attorney for the Nevada Division of Environmental Protection. The motion is attached and is also available on the Commission's website at: <http://www.sec.nv.gov/main/beverly06.htm>

If parties to the appeal are admitted under this statute, the SEC Appeal panel will then entertain a motion for a hearing at a future date to consider the merits of the appeal regarding NDEP's decision on Permit # NEV2006504.

#### **Other Information**

For your convenience, attached is a copy of the SEC Rules of Practice; these rules outline the general procedures for contested cases. If you have any questions about this notice, the rules of practice, or any other matters please call me at (775) 687-9308.

Sincerely  
John B. Walker

Executive Secretary

Attachment  
JBW/jbw

cc: Alan Coyner – SEC Panel Chairman  
Lew Dodgion – SEC Panel Member  
Stephanne Zimmerman – SEC Panel Member  
Pete Anderson – SEC Panel Member (ALT)

Leo Drozdoff, NDEP Administrator  
Tom Porta – NDEP Deputy Administrator  
Colleen Cripps – NDEP Deputy Administrator  
Jon Palm, BWPC  
Al Tinney – NDEP/ BWPC  
Bruce Holmgren – NDEP/BWPC

Ed Goerdhart, Ponderosa Dairies  
Michael Kwiatkowski, Ponderosa Dairies  
Jay Lazarus & Reddy Ganta, Consultants

David Newton, SEC/DAG  
William Frey, NDEP-DAG  
William M Eddie, Esq.  
John L. Marshall, Esq.  
Linda A. Bowman, Esq.