



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

SEC Appeal Hearing

Notice Pursuant to NRS 233B.121 and NAC 445B.891

Date: January 08, 2010

To: Appellants:

John Bosta

Antonio Guerra Martinez

ACE - Amargosa Citizens for the Environment

Represented by John Marshall, Esq.

Respondent:

Nevada Division of Environmental Protection, Bureau of Water

Pollution Control

Represented by William Frey, SDAG, and Carolyn Tanner DAG, Office
of the Attorney General

Intervener:

Rockview Farms, Inc. (Ponderosa Dairy)

Represented by John Zimmerman, Esq. and Jim Butler, Esq.,

Parsons Behle Latimer

From: John B. Walker, Executive Secretary

Subject: Appeal Hearing: Ponderosa Dairy Permit #NV0023027

A three-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing on the above referenced permit. The hearing will begin on January 19, 2010 at 9:30 a.m. in Carson City, Nevada at the Bryan Building, 901 South Stewart St., 2nd floor Tahoe Conference Room. The hearing will continue on January 20th, if necessary, at the same location. The January 19 and 20 hearing dates were selected after consultation with the parties, and the parties were informed of the dates on November 13, 2009.

The SEC has jurisdiction to hear this appeal pursuant to NRS 445A.605, NRS 445A.610, NAC 445B.890 and NAC 445B.891. The statutes and regulations involved in this appeal hearing are: NAC 445A.235, 445A.237, 445A.238, 445A.239, 445A.233, 445A.234, 445A.250, 445A.107, 445A.275, 445A.2748, 445A.2752 to .2756, and 40 C.F.R. 122.23.

About the Appeal: In February 2007, the Nevada Division of Environmental Protection's (NDEP) Bureau of Water Pollution Control issued a public notice and fact sheet for the renewal of Rockview Farms' [Ponderosa Dairy] Water Pollution Control Permit #NV0023027. The public notice and fact sheet contained a detailed description of the entire Ponderosa Dairy facility. In brief, the dairy proposed to expand its operations, which are located at G Ranch and Mecca Roads in Amargosa Valley, Nye County, Nevada. The permit renewal allows an increase in the flow of water from 0.625 million gallons per day (MGD) to 1.000 MGD.

With over 9,000 cows, Ponderosa Dairy is defined as a concentrated animal feeding operation (CAFO). As a CAFO, the Dairy is required to contain all manure and process wastewater from the production area except overflow resulting from a storm greater than the 25-year, 24-hour event. The land application of manure and process wastewater is also required to be in compliance with NDEP's approved nutrient management plan. The receiving waters of concern are groundwater via percolation of irrigation flows, and the Amargosa River via stormwater overflow.

NDEP's notice and fact sheet described the basis for the permit, the public comment process, as well as NDEP's tentative determination for renewing of the permit for an additional five-year period. NDEP's decision to renew the Ponderosa Permit was issued on October 25, 2007. That final decision was subsequently appealed on November 3, 2007 to the SEC by John F. Bosta and Antonio Guerra Martinez.

Appellants present six issues: First, NDEP gave inadequate public notice of the public hearing by publishing the notice only once in the Pahrump Valley Times and by not sending notices to the citizens who requested the hearing. Second, NDEP refused to facilitate public review by refusing to locate a copy of the draft permit or existing Ponderosa Dairy nutrient management plan in southern Nevada, which required the citizens to travel from Amargosa Valley to Carson City or arrange for a service to copy the documents to satisfy their right to inspect public documents. Third, NDEP improperly deferred the completion of the revised comprehensive nutrient management plan for the renewal and expansion until permit issuance. Fourth, the permit is inadequate because there is a lack of groundwater water quality monitoring. Fifth, the comprehensive Nutrient Management Plan is inadequate in its emergency action plan, failure to address track out of sewage, plan facilities information, pest management, mortality disposal plan nutrient management and wastewater irrigation. Sixth, NDEP must apply the regulatory restrictions applicable to sewage, defined in NAC 445A.107, to water-carried animal waste from Ponderosa Dairy.

Procedural History: On March 31, 2009, the SEC held a preliminary hearing at which it granted Rockview Farm's petition to intervene. It also granted Amargosa Citizens for the Environment's (ACE) request for order to intervene on the condition that John Bosta and Antonio Guerra Martinez understood that ACE would be their legal representative and their appeals would be consolidated pursuant to NAC 445B.8957. The parties agreed to prepare briefs to clarify and narrow the issues for consideration at the appeal hearing. A written decision concerning the preliminary hearing was issued on April 27, 2009.

On July 9, 2009, the SEC convened the appeal hearing, although one member of the three-member panel from the March 31, 2009 preliminary hearing was replaced that morning due to circumstances beyond his control. After hearing objections and arguments of counsel about going forward with a new panel member, the panel voted to suspend the hearing and reconvene at a later date.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: <http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>. NRS 233B.121 to 233B.150 are also applicable. See: <http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec121>

Related Information: Additional information about this appeal, including the briefs noted above, is available on the SEC website at the following location: http://www.sec.nv.gov/main/ponderosa_appeal.htm

cc: Rose Marie Reynolds, SEC/DAG
Leo Drozdoff, Administrator, NDEP
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Jon Palm, BWPC
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Members SEC Appeals Panel