

**March 9, 2015**

**NOTICE OF DECISION  
GROUNDWATER POLLUTION CONTROL PERMIT  
NS2014502**

**SMITH VALLEY DAIRY  
WELLINGTON, LYON COUNTY, NEVADA**

The Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control (Bureau) has decided to issue Groundwater Pollution Control Permit NS2014502. This permit authorizes the discharge of manure and process wastewater to Waters of the State via land application, irrigation, and stormwater runoff in accordance with a Bureau reviewed Nutrient Management Plan (NMP) at the Smith Valley Dairy in Wellington, Nevada. The discharge is limited to the nitrogen agronomic rates of the crops to be grown and the production area. This permit is issued in accordance with the provisions of Nevada Revised Statute (NRS) 445A.300 to 445A.730. Further, sufficient information has been provided, in accordance with Nevada Administrative Code (NAC) 445A.228 through NAC 445A.263, to assure the Bureau that the Waters of the State will not be degraded from this operation and that public safety and health in regards to water pollution control will be protected.

This Permit will become effective **March 9, 2015**. The final determination may be appealed to the State Environmental Commission pursuant to NRS 445A.605 and NAC 445A.407. The appeal must be requested within ten (10) days of the date of this notice of decision and in accordance with the administrative rules of the Commission.

All comments were reviewed and evaluated in preparing the responses to the Public Comments received for the Groundwater Pollution Control Discharge Permit NS2014502 issued by NDEP. While individual comments were not specifically quoted, the concept and ideas are included in this Notice of Decision. In that regard, NDEP has made every effort to group similar concepts together for a thorough response.

**RESPONSES TO COMMENTS RECEIVED DURING THE PUBLIC HEARING JANUARY 7, 2015 AND COMMENTS RECEIVED VIA HAND DELIVERY, MAIL AND EMAIL DURING PUBLIC COMMENT PERIOD ENDING JANUARY 30, 2015.**

**1. The following people commented with concern for construction prior to permit issuance.**

Frank Ely of Wellington, NV  
Kim Gattuso of Smith Valley, NV  
Kathy Martin P.E. Oklahoma  
Stephanie Doane of Wellington, NV  
John T. Spencer of Wellington, NV  
Maria Barberia of Smith, NV  
Dave Cosner of Wellington, NV

Chris Murphy of Wellington, NV  
Marshall Todd of Wellington, NV  
Carol McLeod of Wellington, NV  
Bob Lumbard of Wellington, NV  
Gary Simmons of Wellington, NV  
Shassity Murphy of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concerned that construction commenced prior to the permit issuance.
- The above named are concerned the Permittee installed a pipeline and covered it before testing or an inspection could be done.

***NDEP Response:***

- *Construction that commenced prior to the issuance of the permit was addressed by NDEP through a Cease and Desist Order and a Notice of Alleged Violation to the Permittee.*

**2. The following people commented with concern for a management plan to address odors and flies.**

Kathy Martin P.E. Oklahoma  
Deborah Dunn of Smith, NV  
Ron Walker of Wellington, NV  
Gary Simmons of Wellington, NV  
John T. Spencer of Wellington, NV  
Kim Gattuso of Smith Valley, NV

Carol McLeod of Wellington, NV  
Chris Murphy of Wellington, NV  
Marshall Todd of Wellington, NV  
Robert Lumbard of Wellington, NV  
Frank and Linda Ely of Wellington, NV  
Shassity Murphy of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named stated the application does not address how flies, odors, and vectors (rodents) will be managed and specifically that the nuisance management plan is not sufficient or adequate because it does not define in detail what actions the Permittee will take.

***NDEP Response:***

- *NDEP required the Permittee to develop the Management Plan for Nuisance Control (MPNC) to identify methods the dairy will use to minimize flies, odors, and vectors that may occur at the facility. The MPNC has been made a requirement of the permit conditions.*
- *NDEP has reviewed the MPNC and has determined that the plan is adequate and defines in detail what actions the Permittee will take.*

**3. The following people submitted comments regarding inaccurate and incomplete information and insufficient access to the public file.**

Robert Lumbar of Wellington, NV  
Frank Ely of Wellington, NV  
Kathy Martin P.E. Oklahoma  
Dave Cosner of Wellington, NV  
Chris Murphy of Wellington, NV

Marshall Todd of Wellington, NV  
Carol McLeod of Wellington, NV  
Gary Simmons of Wellington, NV  
Shassity Murphy of Wellington, NV  
Kim Gattuso of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named stated that the application was not complete and contained inaccurate information.
- The above named stated that they were not allowed sufficient access to the public file.

***NDEP Response:***

- *After a request by representatives of "Save our Smith Valley", a request for a copy of the permit file. The requestor arranged with an outside service to copy the file. Some double sided pages not properly copied by the company.*

- *Once notified by the requestor, NDEP provided the missing pages the following day.*
- *The permit and files were available for review in NDEP's Carson City office. The complete application and other permit documents were made available on the NDEP website January 6, 2015.*

**4. The following people commented with concern for the mortality management plan.**

Gary Simmons of Wellington, NV	Kim Gattuso of Smith Valley, NV
Robert Lumbard of Wellington, NV	Dave Cosner of Smith Valley, NV
Stephanie Doane of Wellington, NV	Carol McLeod, Wellington, NV
John T. "Tom" Spencer of Wellington, NV	

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named state that the animal mortality plan that allows composting or burial would contaminate waters of the State.

***NDEP Response:***

- *Prior to issuance of the permit, NDEP required clarification of the Mortality Management Plan (MMP).*
- *The permit requires that the MMP ensure proper management of mortalities to ensure that they are not disposed of in a manner that will contaminate waters of the State.*

**5. The following people commented with concern for silage storage and leachate.**

Kim Gattuso of Smith Valley, NV  
 Kathy Martin P.E. Oklahoma  
 Stephanie Doane of Wellington, NV  
 Dave Cosner of Wellington, NV  
 John T. "Tom" Spencer of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named people are concerned that the silage storage area is not lined or not stored in horizontal plastic silos to prevent the leachate contaminating the aquifer.

- The above named people expressed concern for an existing silage covered pile is on an unlined area.

***NDEP Response:***

- *The facility silage storage area will be lined with concrete. Also, the silage will be stored using “agricultural bags” which encapsulate the silage in plastic tubes, and “covered piles”.*
- *The existing covered silage pile will be consumed first. All future silage will be placed on the concrete lined storage area.*

**6. The following people commented with concern for manure production and storage.**

Robert Lumbard of Wellington, NV  
 Carol Mcleod of Wellington, NV  
 Kathy Martin P.E. Oklahoma  
 Chris Murphy of Wellington, NV  
 Dave Cosner of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual’s comments;

- The above named are concerned the amount of manure has been understated by the Permittee in the permit application.
- The above named are concerned that contaminants from manure storage areas will leach into the waters of the State.

***NDEP Response:***

- *As verified with the Permittee, the manure production was calculated using the reference “American Society of Agricultural Engineers (ASAE) D384.1 - Dec 2001” and represents gross manure production. All animals at the facility are assumed to produce 86 lbs. of fresh manure/day/1000 lbs. body weight. Total “fresh manure” production is calculated at 126,000 tons. This reflects 86 % moisture content, as excreted. During on-site management of manure the tonnage is reduced due to evaporation. The amount of manure indicated in the permit application (29,417 tons) reflects the weight of manure at 40% moisture content. The results were similar to those obtained using the methodology for estimating manure production as presented in Colorado State University Bulletin 568A: Best Management Practices for Manure Utilization, which yielded approximately 25,000 tons at 46% moisture.*

- *All liquid waste will be conveyed to lined ponds. Solid manure may be stockpiled in and around the pens and in places of the facility's production area that drain to the wastewater impoundments. Manure storage areas are designed to be protective of waters of the State. Manure may also be transferred to a third party.*

**7. The following people commented with concern for NDEP's resources and effective oversight of the facility.**

Kim Gattuso of Smith Valley, NV  
John T. "Tom" Spencer of Wellington, NV  
Marshall Todd of Wellington, NV  
Carol McLeod of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concern that NDEP does not have adequate resources for regulatory oversight of the facility.

***NDEP Response:***

- *NDEP has the necessary staff to inspect and ensure compliance with permitted conditions.*

**8. The following people commented with a concern for Artesia Lake being a wildlife management area.**

Robert Lumbar of Wellington, NV  
Ruth Iverson of Wellington, NV  
Kathy J. Martin, P.E. (Oklahoma)

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concerned that Artesia Lake is a wildlife management area and was not mentioned on the application, fact sheet or Pubic Notice and that a discharge to Artesia Lake is illegal.

***NDEP Response:***

- *The statement that Artesia Lake is a wildlife management area has been added to the fact sheet.*
- *The Permit requires that the facility contain all discharges, except during storms greater than a 25 year, 24 hour event.*

**9. The following people commented on the Public Hearing and Appeal Process.**

Maria Barberia of Smith, NV  
Connie Kretschmer of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named requested information regarding the public hearing and appeal process.

***NDEP Response:***

- *Public hearings are conducted in accordance with regulations to provide the public an opportunity to submit their concerns regarding the draft permit. Comments from the public hearing are being addressed in this document.*
- *The public can appeal a permit in accordance with Statutes and Regulations through the State Environmental Commission. Instructions for appeal can be found on the State Environmental Commission website at <http://www.sec.nv.gov>.*

**10. The following people commented with concern for water quantity and usage.**

Robert Lumbar of Wellington, NV  
Megan Hunewill of Wellington, NV  
Dave Zahradnik of Desert View Estates  
Judy Focha of Smith, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named commented on water quantity and classified use.

***NDEP Response:***

- *Classified water usage types and water quantity issues are beyond the authority of the Bureau of Water Pollution Control and are within the purview of the Division of Water Resources.*

**11. The following people commented with concern for discharges that are allowed on the condition of a 25-year 24-hour precipitation event or chronic storm event.**

Robert Lumbard of Wellington, NV  
Megan Hunewill of Wellington, NV  
Dave Cosner of Wellington, NV  
Judy Focha, Smith, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named state that the 25-year 24-hour or larger storm and overflow would have to go through two miles of a private property.

***NDEP Response:***

- *The Permit requires that the facility contain all discharges, except during storms greater than a 25 year, 24 hour event.*

**12. The following people commented with concern for pond design and pond monitoring requirements.**

Kathy Martin P.E. Oklahoma  
Stephanie Doane of Wellington, NV  
Dave Cosner of Wellington, NV  
Jeannine Price of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concerned with the pond design including leakage and overflow.
- The above named question who is responsible for monitoring of the ponds?



***NDEP Response:***

- *NDEP has required the Permittee to line the ponds with a synthetic liner. In addition, monitoring wells have been placed to detect any leakage that may occur from the lined ponds. The permit NMP requires that the ponds be designed to prevent overflow, except in excess of the 25 year 24 hour storm event.*
- *The Permit requires the Permittee to conduct all required sampling and NDEP maintains regulatory oversight.*

**13. The following people commented with concern for land application of manure and process water.**

Stephanie Doane of Wellington, NV  
Jeannine Price of Wellington, NV  
Jim Kinninger of Wellington, NV  
Ruth Iverson of Wellington, NV  
Kathy Martin P.E. Oklahoma

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named request to know what protection is provided to residents and schools for land application of manure and process water.
- The above named are concerned regarding land application during winter.

***NDEP Response:***

- *The Permittee shall apply manure and process water in accordance with the NMP to prevent offsite migration of application materials.*
- *Neither the Permit nor the NMP allows for application in winter to frozen snow-covered or saturated soils.*

**14. The following people submitted comments regarding groundwater monitoring well locations and sampling requirements.**

Kathy Martin P.E. Oklahoma  
Jeannine Price of Wellington, NV  
Judith Harker  
Dave Cosner of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concerned with the location of monitoring well number one.
- The above named are concerned with which species of Nitrogen the Permittee will be sampling for.
- The above named are concerned with the acquisition of the baseline data and the continued sampling of the monitoring wells.

***NDEP Response:***

- *NDEP has required the Permittee to install four monitoring wells. Three monitoring wells will provide leak detection monitoring around the ponds and one placed up-gradient of the facility to monitor background water quality.*
- *The total Nitrogen limits in the permit have been set for less than or equal to 10 mg/L which is protective of the waters of the State. Total Nitrogen includes all species.*
- *NDEP has added to the permit conditions a requirement for the Permittee to conduct baseline sampling data from the monitoring wells prior to facility operations.*

**15. The following people submitted comments in regards to lining of the penned area.**

Robert Lumbard of Wellington, NV  
Stephanie Doane of Wellington, NV  
Shassity Murphy of Wellington, NV  
Marshall Todd of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named are concerned that adequate measures for the prevention of contamination of the waters of the State by pathogens and hormones have not been required within the penned areas.

***NDEP Response:***

- *As standard practice for the industry, lining of penned areas is not required. The facility is designed to manage runoff from the penned areas to the ponds.*

**16. The following people submitted comments regarding land use and zoning.**

Darlene Peters of Wellington, NV  
Ruth Iverson of Wellington, NV  
Dave Cosner of Wellington, NV  
Judy Focha of Smith, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named were concerned regarding the land use and zoning.

***NDEP Response:***

- *Land use and zoning are beyond the authority of the Bureau of Water Pollution Control.*

**17. The following people commented with citations for Division of Water Resources (NRS 534.020).**

Robert Lumbard of Wellington, NV  
Marshall Todd of Wellington, NV  
Kim Gattuso of Smith Valley, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named state that NRS 534.020 (2) stipulates that the State Engineer is empowered to employ such measures as to prevent the pollution and contamination of the underground waters.

***NDEP Response:***

- *Division of Water Resources Statutes are beyond the authority of the Bureau of Water Pollution Control.*

**18. The following people submitted comments regarding the Public Notice duration.**

Robert Lumbard of Wellington, NV  
Frank Ely of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named state they were given insufficient time to review the permit and provide public comment.

***NDEP Response:***

- *The Bureau of Water Pollution Control complied with the Statutory and Regulatory requirement to provide a 30 day Public Comment period. However, in response to public's request, the public notice closing date was extended an additional 21 days.*

**19. The following people submitted comments in regards to the facility location details.**

Robert Lumbar of Wellington, NV  
Carol McLeod of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comments;

- The above named state the physical description of the facility location details are incorrect in the fact sheet.

***NDEP Response:***

- *The location stated in the body of the fact sheet and in the introduction of the permit has been revised.*

**20. The following person submitted comments in regards to air quality and water quality in the valley.**

Hilary Boudreau of Wellington, NV

**Public Concern:**

Paraphrasing form the above named individual's comment;

- The above named state that she is concerned about impacts to air quality and water quality as a result of such a concentrated amount of cows.

***NDEP Response:***

- *Air quality is outside the authority of the Bureau of Water Pollution Control.*

- *The permit is designed to be protective of the waters of the State.*

**21. The following person submitted comments in regards to an Environmental Impact Studies.**

Jeannine Price of Smith, NV

**Public Concern:**

Paraphrasing from the above named individual's comment;

- The above named questions if there has been and environment impact study made or requested.

***NDEP Response:***

- *Environmental impact studies are beyond the authority of the Bureau of Water Pollution Control.*
- *An Environmental Impact Statements (EIS) is not required unless there is a Federal Action involved.*

**22. The following person submitted comments in regards to a discrepancy between the permit application and NMP.**

Carol McLeod of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comment;

- The permit indicates that there will be no chemicals at the dairy and the NMP indicates Pyganic will be used for fly control. What are the chemical storage requirements for the dairy?

***NDEP Response:***

- *The permit requires that chemicals and other contaminants be handled in a manner specifically designed to treat such chemicals and other contaminants.*

**23. The following person submitted comments in regards to the use of the wording sewage sludge in the permit.**

Kathy Martin P.E. Oklahoma

**Public Concern:**

Paraphrasing from the above named individual's comment;

- The language that states land application means the spraying or spreading of sewage sludge in not appropriate for this facility.

***NDEP Response:***

- *Sections of the permit that refer to sewage sludge have been exempted in the Special Approvals/Conditions Table.*

**24. The following person submitted a comments in regards to the wells within a one mile radius.**

Carol McLeod of Wellington, NV

**Public Concern:**

Paraphrasing from the above named individual's comment;

- Not all wells within a 1-mile radius have been identified by the applicant.

***NDEP Response:***

- *NDEP has reviewed the application and found it to be complete.*

**25. The following people submitted comments on a petition to oppose Smith Valley Dairy.**

Carol Mcleod  
Garry Simmons  
Robert Lumbard  
Kim Gattuso  
Hilary Boudreau  
Shassity Murphy

Mashall Todd  
Stephanie Doane  
Ruth Iverson  
John Roemer  
Charles Carter  
Kathryn Gauldin

Kelley Grosward  
M. Younger  
Ronda Eden  
Phil and Karen Gangwish  
Richard and Sandi Smolin  
William Park  
Steven Hanks  
Carolyn Kates  
Cathy Kerrigan  
V. Joyce Casler  
Jay Turner  
John and Candace Hastie  
Thomas Grothaus  
Fred and Leslie Winningham  
James and Eve Harpster  
Ellen Waggoner  
Lloyd P. Giovalin  
Clyde and Sandra Jurey

Robbin Moore  
Clara Tate  
Timothy and Robyn Delaney  
Tom and Kitty Spencer  
Jerry Nansel  
David Dahl  
Dave and Julie Cosner  
Jim Hardison  
Tom Walburn  
Jim and Sue Ramirez  
Don and Darlene Smyth  
Robert W.  
Gwen Hosey  
Bill and Shirley Miser  
Ron and Vickie Moore  
Shirley Fletcher  
Ken Pollard  
Willie and Bety Gurule

**Public Concern:**

Quoting from the petition language;

- “If the (Smith Valley Dairy) plans are not withdrawn, we request that the NV Division of Environmental Protection (NDEP), Bureau of Water Pollution Control (BWPC) uphold its duty under the federal Clean Water Act and state and local law to protect the public from environmental pollution and disapprove any operating permits to the facility.”
- “If BWPC decides to proceed, we request a hearing on the proposed CAFO permit so that we can present our concerns to NDEP.”

***NDEP Response:***

- *This permit is issued in accordance with the provisions of NRS 445A.300 to 445A.730.*
- *Due to a significant degree of interest in this proposed project, the Division scheduled a Public Hearing to gather additional public input regarding the draft permit. The Public Hearing was held Wednesday January 7, 2015.*

**26. The following people submitted comments in support of both the Smith Valley Dairy and the permit.**

Darrell Pursel with Lyon County Farm  
Bureau  
Dave Tyndall of Smith, NV  
Paul Costa  
Ted Holloway  
Jim De Chambeau of Yerington, NV  
Bobbie Smith of Wellington, NV  
Ervin T. Hill, USAF Retired  
Gary LaFleur, Wellington, NV  
Lyn and Dave Tyndall of Wellington, NV

Daniel G. Smith of Wellington, NV  
Rebecca Wellnitz  
Richard and Cindy Nuti  
Ralph E. and Mary E. Nuti  
Michael and Nancy Nuti  
Larry and Leslie Nuti  
William and Helen Leveille, Wellington NV  
Carolyn Day  
Leland D. Hayden  
Sandie Marriott

*All comments not related to the workings of the draft permit were noted for the record. The permit was drafted in response to an application for discharge to Waters of the State. The permit is designed to be protective of the Waters of the State.*