

**ADOPTED REGULATION OF THE STATE**  
**ENVIRONMENTAL COMMISSION**

**LCB File No. R079-04**

Effective October 13, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 445A.425 and 445A.465; §3, NRS 445A.425 and 445A.430.

A REGULATION relating to the discharge of pollution; revising the provisions relating to animal confinement facilities; requiring owners of facilities which engage in agricultural or silvicultural activities and which are designated as significant contributors of pollution to apply for a permit not later than 90 days after receiving notification of this designation; increasing the fees for general permits for dischargers engaged in agricultural or silvicultural activities; and providing other matters properly relating thereto.

**Section 1.** NAC 445A.228 is hereby amended to read as follows:

445A.228 1. Except as otherwise provided in subsection 2, a person shall not discharge a pollutant from a point source into any waters of this State without obtaining a permit from the Department.

2. Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

(a) Persons utilizing an individual sewage disposal system or other sewage disposal system that uses a soil absorption system for the treatment and disposal of domestic wastes, with accumulative flows of less than 5,000 gallons per day, providing the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments or the State Board of Health. This exemption does not preclude the possibility that health authorities will require permits.

(b) Except as otherwise provided in this paragraph, persons discharging pollutants into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the Department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he allows to be discharged into the system. The Department may require an industrial user who discharges pollutants into a publicly owned treatment works which does not have an approved pretreatment program to obtain a permit pursuant to NAC 445A.257.

(c) Discharges of pollutants from agricultural and silvicultural activities, including, without limitation, irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this exemption does not apply to the following:

(1) Discharges from facilities *in* which *crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season and that* confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

(I) ~~[(Slaughter and feeder cattle,)]~~ *Cattle, veal calves or a pair consisting of a cow and a calf,* 1,000;

(II) Mature dairy cattle (whether milkers or dry cows), 700;

(III) Swine weighing over 55 pounds, 2,500;

(IV) *Swine weighing 55 pounds or less, 10,000;*

(V) Horses, 500;

~~[(V) Sheep, 10,000;]~~

(VI) *Sheep or lambs, 10,000;*

(VII) Turkeys, 55,000;

~~[(VII) Laying hens and broilers,]~~

(VIII) *Chickens*, if the animal confinement facility has ~~[continuous overflow watering,~~  
~~100,000;~~

~~————(VIII) Laying hens and broilers,] a liquid manure handling system, 30,000;~~

(IX) *Chickens, other than laying hens*, if the animal confinement facility ~~[has] does~~  
~~not have a~~ liquid manure handling ~~[systems, 30,000; or~~

~~————(IX)] system, 125,000;~~

(X) *Laying hens, if the animal confinement facility does not have a liquid manure*  
*handling system, 82,000;*

(XI) Ducks, *if the animal confinement facility has a liquid manure handling system,*  
5,000 ~~[-~~

~~————(2) Discharges from facilities which confine animals if such facility or facilities contain,~~  
~~or at any time during the previous 12 months contained, for a total of 30 days or more, a~~  
~~combination of animals such that the sum of the following numbers is 1,000 or greater: The~~  
~~number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle~~  
~~multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the~~  
~~number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

~~————(3)] ; or~~

(XII) *Ducks, if the animal confinement facility does not have a liquid manure*  
*handling system, 30,000.*

(2) Discharges from production facilities for aquatic animals.

~~[(4)]~~ (3) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water) operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

~~[(5)]~~ (4) Discharges from any agricultural or silvicultural activity which have been identified by the Administrator or the Director as a significant contributor of pollution.

**Sec. 2.** NAC 445A.230 is hereby amended to read as follows:

445A.230 1. ~~[(Any)]~~ *Except as otherwise provided in subsection 2, any* person wishing to commence future discharges of pollutants must file a complete permit application on forms provided by the Department, not less than 180 days in advance of the date on which the person desires to commence the discharge of pollutants, unless the Department has granted permission for a later date.

2. *The owner of a facility described in subparagraph (4) of paragraph (c) of subsection 2 of NAC 445A.228 must file a complete permit application on forms provided by the Department not later than 90 days after receiving notification of having been identified by the Administrator or the Director as a significant contributor of pollution.*

3. The Director:

(a) May require the submission of additional information after a permit application has been filed; and

(b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

~~3.~~ 4. If, upon review of an application, the Department determines that a permit is not required, the Department shall notify the applicant in writing of this determination. The notification constitutes final action by the Department on the application.

**Sec. 3.** NAC 445A.268 is hereby amended to read as follows:

445A.268 1. A general permit may be issued upon proper application by a group of dischargers whose facilities meet the requirements of NAC 445A.266. The application must include:

- (a) The name and address of the discharger;
- (b) The exact location of the discharge;
- (c) The nature of the discharge;
- (d) The name and location of the receiving waters;
- (e) The quantity and quality of the discharge; and
- (f) Any other information deemed necessary by the Director for the determination of whether the discharger should be included in the general permit.

2. A general permit may be issued without application if the Director deems it appropriate.

3. If a general permit has been issued, a discharger who is eligible to be covered under the permit may submit a request to the Director to be included in the general permit. Such a request must include the information required by subsection 1, be accompanied by a nonrefundable fee ~~of~~:

*(a) Of \$700, if the discharger is a facility described in subparagraph (1) of paragraph (c) of subsection 2 of NAC 445A.228; or*

*(b) Of \$200, if the discharger is not a facility described in subparagraph (1) of paragraph (c) of subsection 2 of NAC 445A.228,*

↪ and be signed in the manner prescribed by NAC 445A.231 for application and reporting forms. If such a request is denied because the Director has determined that the discharger must be covered under an individual permit, the Director must inform the holder pursuant to the provisions of NAC 445A.269.

4. A discharger will not be covered under a general permit until he has been notified by the Director.

5. A discharger who is covered under a general permit *and:*

*(a) Is a facility described in subparagraph (1) of paragraph (c) of subsection 2 of NAC 445A.228, shall pay to the Director a nonrefundable fee of \$700 not later than July 1 of each year that the discharger is covered under that permit.*

*(b) Is not a facility described in subparagraph (1) of paragraph (c) of subsection 2 of NAC 445A.228, shall pay to the Director a nonrefundable fee of \$200 not later than July 1 of each year that the discharger is covered under that permit.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R079-04**

The State Environmental Commission adopted regulations assigned LCB File No. R079-04 which pertain to chapter 445A of the Nevada Administrative Code on August 19, 2004.

**Notice date:** 7/16/2004  
**Hearing date:** 8/19/2004

**Date of adoption by agency:** 8/19/2004  
**Filing date:** 10/13/2004

**INFORMATIONAL STATEMENT**

**The following statement is submitted for adopted amendments to Nevada Administrative Code NAC 445A.228, Requirement; exemption, and NAC 445A.268, Application for permit; request to be included in permit; fees. NAC 445A.228:** This regulation makes limited changes to the state's definition of concentrated animal feeding operations (CAFO) as defined at NAC 445A.228. These changes revise several of the animal containment facility categories and the threshold number of animals present to require a discharge permit.

This regulation will provide for consistency between the NAC and the federal CAFO regulations, as required to maintain National Pollutant Discharge Elimination System (NPDES) permit authority per NAC 445A.268:

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control (BWPC) held workshops on the above referenced regulation at the following locations.

Department of Conservation and Natural Resources 123 W. Nye Lane, Room 217 Carson City, Nevada 89706 Time: 1:00 PM <b>Date: February 19, 2004</b>	Elko City Hall, Council Chambers 1751 College Avenue Elko, Nevada 89801 Time: 2:00 PM <b>Date: February 17, 2004</b>	Grant Sawyer Building Capital Police Meeting Room 1100 555 East Washington Avenue Las Vegas, Nevada 89101 Time: 1:00 PM <b>Date: February 25, 2004</b>
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The proposed regulation was also noticed by the State Environmental Commission (SEC) in the Las Vegas Review Journal (LVRJ) and Reno Gazette Journal (RGJ) newspapers on the following dates – July 19, July 26 and August 9, 2004. The public was subsequently mailed a public notice and meeting agenda for the SEC hearing; the SEC mailing list was used for both mailings.

At the SEC hearing, there were no public oral comments received by the Commission during the adoption of the referenced regulation.

**2. The number persons who:**

- (a) **Attended August 19, 2004 hearing;** 30
- (b) **Testified on this Petition at the hearing:** 1 (NDEP Staff)
- (c) **Submitted to the agency written comments:** None

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Questions were asked at the workshops noted in #1 above but only one oral comment was made at one of the workshops and no written comments were received. At the request of the Nevada Farm Bureau, the CAFO definition of the proposed amendments was revised to be more precise by including a portion of the federal CAFO definition regarding vegetative cover of the confinement area.

The public notice was also mailed to the people and companies on a list compiled from the Department of Agriculture Environmental Action Committee (EAC) mailing list, the Nevada Dairy Commission's mailing list, BWPC's standard and public hearing mailing lists, and a list of potential CAFOs provided by the Natural Resources Conservation Service.

NDEP gave presentations on the proposed US Environmental Protection Agency (EPA) regulation, the final EPA regulation, and the proposed amendment to the EAC. A presentation on the proposed CAFO regulation was also give to the Nevada State Board of Agriculture.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

After the solicitation of public comments at the above mentioned workshops was concluded, a change was made to the proposed regulation to address the only comment received. The regulated community has accepted these changes.

The final draft regulation was adopted by the State Environmental Commission (SEC) on August 19, 2004 without any changes. Changes to the regulation were not proposed by staff (Nevada Division of Environmental Protection -- NDEP) nor by the Commission at the August 19th SEC hearing. NDEP was successful in working with affected stakeholders and the legal staff of the Legislative Council Bureau to insure the regulation was comprehensive.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.**

The direct economic effect of the regulation on the business, which is to be regulated and on the public, is less than \$10 per year. Accordingly, the estimated adverse immediate and longterm economic effects of the proposed regulation on the business is minimal. There is no estimated beneficial immediate economic effect of the proposed regulation on the business, which it is to

regulate. The beneficial long-term economic effects of the regulation is a reduced environmental impact to surface and ground waters, and the potential avoided clean up costs and subsequent reduced property values. NDEP did not attempted to quantify this long-term beneficial effect.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

The estimated cost to the agency for enforcement of the proposed amendment is not anticipated to increase beyond the current level for the following reasons:

NDEP has not identified any newly defined production facilities under the proposed amendment.

Clarifying the CAFO definition should reduce the need for enforcement, not increase the cost of enforcement.

NDEP has the authority to regulate an animal feeding operation of any size, if the facility is identified as a significant contributor of pollution. A designated CAFO would be required to apply for a permit under the existing regulation. The proposed amendment mandates a timeframe for the submittal of such applications.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation does not overlap or duplicate any Nevada regulation. This action is necessary to amend the NAC to conform with revisions to the CAFO portion of the federal National Pollutant Discharge Elimination System regulations administered by the EPA. To maintain state delegation of the NDEP's program, the state must adopt regulations that are at least as stringent as the federal regulations.

**8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The proposed regulation revision is more stringent than the federal regulation in that the federal regulation does not provide for, or establish, fees for CAFO general permits. In all other aspects, the proposed regulation revision meets but does not exceed the minimum requirements of the federal regulation.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The regulation creates a \$700 general permit application and annual fee for concentrated animal feeding operations. The creation of this fee is required to cover the costs of developing a CAFO general permit and administering a CAFO general permit program.