

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2
3 In Re:)
4)
5 -- Public Petition --)
6 Amargosa Citizens for the Environment)
7 Submitted Under NRS 233B.120)

DECISION

8 At its February 11, 2009 meeting, the State Environmental Commission ("Commission")
9 considered a petition submitted by the Amargosa Citizens for the Environment ("ACE")
10 pursuant to NRS 233B.120 and NAC 445B.888 which requested declaratory orders on three
11 issues and an advisory opinion on a fourth issue. The request for a declaratory order on one
12 issue was continued to the next Commission meeting. On June 17, 2009, the Commission
13 met and considered the remaining issue in ACE's petition: Sewage as defined in NAC
14 445A.107 includes dairy feedlots. Representatives from ACE, Rockview Farms, the Nevada
15 Department of Agriculture, and the Nevada Division of Environmental Protection ("NDEP")
16 participated. Public comment was also received.

17 NAC 445A.107 states:

- 18 1. "Sewage" means the water-carried human or animal waste from
19 residences, buildings, industrial establishments, feedlots or other
20 places, together with such groundwater infiltration and surface
21 water as may be present.
22 2. The term includes the mixture of sewage with wastes or
23 industrial wastes.

24 NDEP stated that ACE's petition should be dismissed and offered four reasons: (1) the
25 definition of sewage in NAC 445A.107 is clearly written; (2) adding "dairy" to the definition of
26 sewage was not necessary and would not change the regulation; (3) the Commission's
27 interpretative powers are limited pursuant to NRS 233B.120 and ACE's request is outside the
28 limits; and (4) the definition of sewage does not determine or drive the regulatory approach

1 NDEP takes for any industry. It said the definition of sewage was clear and straightforward
2 and needed no further interpretation. NDEP's position was supported by the Nevada
3 Cattlemen's Association and counsel for Rockview Farms.

4 The Nevada Department of Agriculture presented information regarding the differences
5 between manure and sewage. Jay Lazarus from Glorietta Geoscience explained that dairies
6 are not feedlots because feedlots are dry and dairies are wet and each has different control
7 technologies. Feedlots are dry because when feeding cattle, liquid that could be defined as
8 sewage is not generated. Dairies are wet because cows must be cleaned with water before
9 milking for herd health and milk quality. He believed that feedlots should be deleted from the
10 definition of sewage. He also said that NDEP regulates in conformity with the federal CAFO
11 (concentrated animal feeding operation) rules.

12 Counsel for ACE said its position is that waterborne waste coming off a dairy should be
13 classified as sewage under the definition in NAC 445A.107. He said that the point was well
14 taken that the definition of sewage in NAC 445A.107 was relatively straightforward. ACE
15 clarified that it was not asking that a dairy feedlot be defined in and of itself as sewage.

16 After hearing testimony and questioning witnesses, the Commission determined that it
17 did not want to go into the definition of feedlot and that the definition of sewage in NAC
18 445A.107 was clear on its face. The definition of sewage in NAC 445A.107 includes water-
19 carried animal waste from all feedlots. Because the definition was clear on its face, the
20 Commission determined to dismiss the petition as moot.

21 Based on the foregoing, the petition filed by Amargosa Citizens for the Environment
22 requesting a declaratory order that sewage as defined in NAC 445A.107 includes dairy
23 feedlots is DENIED as moot.

24 Dated this ____ day of June, 2009.

25
26 _____
27 Lew Dodgion, Chairman
28 State Environmental Commission