

Water Pollution Control Concentrated Animal Feed Operations Filing Statement

Legislative Review Of Adopted Regulations As Required
By Administrative Procedures Act, NRS 233B.066

Petition 2004-18 (LCB File R-079-04)
State Environmental Commission

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
Date: February 19, 2004

Elko City Hall, Council Chambers
1751 College Avenue
Elko, Nevada 89801
Time: 2:00 PM
Date: February 17, 2004

Grant Sawyer Building
Capital Police Meeting
Room 1100
555 East Washington Avenue
Las Vegas, Nevada 89101
Time: 1:00 PM
Date: February 25, 2004

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 given 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 long-term 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 attempt 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.

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