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BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

In Re: Appeal of Groundwater Pollution Control Permit No. NS2014502 Smith Valley Dairy	**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S RESPONSE TO OPENING BRIEF OF SAVE OUR SMITH VALLEY, INC.**

The State of Nevada, Division of Environmental Protection, Bureau of Water Pollution Control ("NDEP"), by and through counsel, Adam Paul Laxalt, Attorney General for the State of Nevada, and Katie S. Armstrong, Deputy Attorney General, hereby responds to the Opening Brief of Appellant, Save Our Smith Valley, Inc. ("Appellant") in the above-captioned matter. On March 9, 2015, NDEP issued Groundwater Discharge Permit No. NS2014502 ("permit") to the permittee, Smith Valley Dairy, for the Smith Valley Dairy located at 40 Hunewill Lane, Wellington, Nevada. On March 19, 2015, the Appellant filed a Form #3 Request for an Appeal Hearing with the State Environmental Commission ("SEC"). The SEC is scheduled to hold a hearing on July 23, 2015.

I.

INTRODUCTION

NDEP opposes Appellant's appeal of its decision to issue the Groundwater Discharge permit NS2014502 on the issues presented. Appellant's Opening Brief is driven by emotion and fails to raise any grounds that would form a basis for modifying or remanding the permit

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back to NDEP. Further, as NDEP will demonstrate below, the Appellant's Opening Brief consistently misstates facts, misapplies rules of law, and is riddled with inaccuracies. NDEP takes exception to several of the unfounded allegations Appellant has presented. Further, based on the lack of merit and evidence presented by the Appellant, this appears to be nothing more than the Smith Valley residents' attempt at disrupting the Smith Valley Dairy. In particular the local residents are concerned about the dairy operation as it relates to potential odors and visual impacts that are not the subject of permit requirements for water pollution control. The Appellant presents no evidence or argument that NDEP acted arbitrarily or capriciously or otherwise abused its discretion in issuing the permit. Therefore, the appeal should be dismissed and the permit affirmed.

This Response Brief will first give an overview of the permitting process relevant to the Smith Valley Dairy groundwater discharge permit. Second, NDEP will highlight the relevant requirements within the permit that meet and exceed the required standards. NDEP will then respond to Appellant's legal arguments. It must also be noted that the portion of Appellant's Opening Brief that contains a "sampling of summary testimony" of Smith Valley residents is irrelevant, inadmissible evidence, and should not be considered by the SEC in its review of this appeal.

II.

BACKGROUND

In September of 2013, AGPROfessionals, Developers of Agriculture, on behalf of the Smith Valley Dairy, submitted an application to NDEP for a new groundwater discharge permit to discharge dairy manure and process wastewater to waters of the State. The Smith Valley Dairy is considered an Animal Feeding Operation ("AFO") because it is an agricultural operation where animals are kept and raised in confined situations.[1] The Smith Valley Dairy is further considered a concentrated animal feeding operation ("CAFO") because it is designed to confine at least 700 mature dairy cows for 30 days or more in a 12-month period

[1] Specifically, an AFO is a lot or facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 CFR 122.23

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in an area not sustained in the normal growing season. NAC 445A.228. Further, because the Smith Valley Dairy will not be discharging to a Waters of the U.S., a Nevada State CAFO permit is required, rather than a National Pollutant Discharge Elimination System permit ("NPDES") *See* Exhibit 1 , and NAC 445A.228.

For over a year, NDEP worked cooperatively and consistently with the Smith Valley Dairy, AGPROfessionals, and the public, including the Appellant, in developing the permit. Working cooperatively and consistently with the parties involved is the general practice NDEP employs in the development of permits that are issued under NDEP's authority. On March 9, 2015, NDEP issued Groundwater Discharge Permit NS2014502 to the Smith Valley Dairy. *See* Exhibit 2. As Waters of the U.S. are not affected, the Nevada Water Pollution Control Law and related regulations are the controlling authorities that NDEP relied upon in developing and issuing the permit. NDEP also relied on federal CAFO regulations and Natural Resource Conservation Service ("NRCS") standards[2], which are recognized by the United States Environmental Protection Agency.

Development of the permit included strict adherence to the relevant Nevada statutory and regulatory law, along with utilization of several of the NRCS standards. NDEP also complied with the statutory and regulatory public notice requirements. Furthermore, as NDEP shows, the permit requirements meet or exceed the required standards.

III.

STANDARD OF REVIEW

Under NAC 445B.890, an appeal to the SEC of a final decision of NDEP must be based upon one or more of the following grounds:

a. The final decision was in violation of any constitutional or statutory provision;

b. The final decision was in excess of the statutory authority of the Department;

c. The final decision was made upon unlawful procedure;

[2] NRCS is an agency of the United States Department of Agriculture. The NRCS works with farmers, ranchers, local and state governments, and other federal agencies to maintain healthy and productive landscapes while conserving the nation's soil, water, air and other natural resources. NRCS Conservation Practice Standards provides information on why and where a practice is applied, and sets forth the minimum quality criteria that must be met during the application of the practice in order for it to meet its intended purpose. *http://www.nrcs.usda.gov/wps/portal/nrcs/site/national/home/.*

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d. The final decision was affected by other error of law;

e. The final decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

f. The final decision was arbitrary or capricious or characterized by abuse of discretion.

The Nevada Supreme Court recently clarified that the standard of proof that is required to be used in administrative hearings is a preponderance of the evidence. *Nassiri v. Chiropractic Physicians' Board of Nevada*, 130 Nev. Adv. Op. No. 27, P.3d 487 (2014). Preponderance of the evidence means "evidence that enables a trier of fact to determine that the existence of the contested fact is more probable that the nonexistence of the contested fact." A.B. 53, 2015 Leg., 78th Sess. (NV. 2015). The Commission must review the NDEP's issuance of Smith Valley Dairy's permit under an abuse of discretion standard and uphold the NDEP's decision if it is supported by a preponderance of the evidence. NDEP, as the expert agency, deserves deference to its permitting decisions and to the evidence that was before it when it was engaged in the decision-making process. *State Indus. Ins. System v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 581 (Nev. 1996).

IV.

STATEMENT OF ISSUES

A. The Smith Valley Dairy Groundwater Discharge Permit Meets and Exceeds the State and Federal Requirements.

Contrary to the Appellant's contentions, the Smith Valley Dairy permit that NDEP issued meets or exceeds all State and federal requirements. The permit was developed in accordance with Best Management Practices ("BMPs") and evaluated by NDEP pursuant to best engineering judgment.[3]

NDEP required Smith Valley Dairy to install four monitoring wells. Three monitoring wells provide liner leak detection monitoring around the storage impoundments. The fourth

[3] BMPs are defined as "a permit condition used in place of or in conjunction with effluent limitations to prevent or control the discharge of pollutants. BMPs may include a schedule of activities, prohibition of practices, maintenance procedure, or other management practice." http://water.epa.gov/scitech/wastetech/guide/questions_index.cfm#bmp

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monitoring well was placed upgradient of the facility to monitor background water quality. In accordance with BMPs, the storage impoundments are lined with .060 inch thick (60 mil) high-density polyethylene. Further, per the permit, the storage impoundments were designed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003; NRCS Conservation Practice Standard Code 317, Composting Facility, October 2003; and NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003. *See* Exhibit 2, Permit at 27, B.CO.13. This includes the requirement for the structures to be designed and constructed to contain all manure and process wastewater from the production area accumulated during the design storage period plus the precipitation and run-on resulting from the 25-year, 24-hour storm event. Specifically, section B.CO.13 states:

> **Waste Storage Facility Design and Construction:** All waste storage and treatment facilities shall be designed and constructed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; NRCS Conservation Practice Standard Code 317, Composting Facility, October 2003 or more recent; and/or NRCS Conservation Practice Standard Coded 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate. All waste storage and treatment facilities shall include a staff gage or other method of determining the available storage capacity of the impoundment. All structures shall be designed, constructed, operated, and maintained to contain all manure and process wastewater from the production area accumulated during the design storage period plus the direct precipitation and run-on resulting from the 25-year, 24-hour storm event.

The Smith Valley Dairy has developed, and NDEP approved, a Nutrient Management Plan ("NMP") in accordance with NRCS Conservation Practice Standard Code 590 Nutrient Management, June 2002, and NRCS Conservation Practice Standard Code 633 Waste Utilization, October 2003. *See* Exhibit 2, Permit at 26 B.CO.8 and at 32 B.NMP.1. The NMP directs how to manage nitrogens and phosphorus through BMPs and procedures necessary to

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implement applicable effluent limitations and standards. The NMP along with the lining of the storage ponds is intended to minimize to the maximum extent practicable pollutants from entering the groundwater. Per the permit, the NMP contains provisions that address the following:

B.CO.8.1 Ensure adequate storage and handling of manure and process wastewater including procedures to ensure proper operation and maintenance of storage facilities:

B.CO.8.2 Identify site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices to control runoff to surface Wates of the State;

B.CO.8.3 Identify protocols for appropriate testing of manure, process wastewater, and soil;

B.CO.8.4 Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure and process wastewater; and

B.CO.8.5 Identify specific records that shall be maintained to document the implementation and management of the minimum elements described in the NMP and this part.

The Smith Valley Dairy is required to implement the NDEP approved Animal Mortality Management Plan ("AMMP"), also in accordance with BMPs, to ensure proper disposal of dead animals to prevent discharge of pollutants to the groundwater. Specifically:

B.CO.25. Animal Mortality Management Plan: The Permittee shall implement the Division-approved Animal Mortality Plan (AMMP) to ensure proper disposal of dead animals and prevent the discharge of pollutants to Waters of the State. Animal carcasses shall not be disposed of in storage or treatment facilities unless the facility is designed specifically to treat the carcasses. *See* Exhibit 2, Permit at 29, B.CO.25.

In addition, the Smith Valley Dairy developed a Management Plan for Nuisance Control ("MPNC"), another BMP, in accordance with Generally Accepted Agricultural Best Management Practices. The MPNC identifies methods the dairy will use to minimize flies,

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odors and disease vectors that may occur at the facility. Furthermore, the Smith Valley Dairy has committed to storing all future silage, food for the cattle, on concrete.

a. The Permit does not violate the Clean Water Act because pollutants will not be discharged into a Water of the United States.

Throughout the Opening Brief, Appellant contends the permit violates the Clean Water Act and that the dairy needs a National Pollution Discharge Elimination System permit ("NPDES"). The Clean Water Act (CWA) is a law enacted by Congress that establishes environmental programs, including the NPDES program, to protect the Nation's waters. Specifically, the CWA prohibits anybody from discharging pollutants through a point source into a **Water of the United States** unless they have an NPDES permit.

Here, the Smith Valley Dairy applied for a groundwater discharge permit to discharge dairy manure and process wastewater to Artesia Lake only in the event of an overflow resulting from a 25-year 24-hour storm event or chronic storm event. Artesia Lake is located in the Walker River basin. The Walker River basin flows from its headwaters in the Sierra Nevada to the terminus at Walker Lake, and is a closed basin with no outflow or discharge except through evaporation. As Artesia Lake is located within a closed basin, it is not a Water of the U.S., and therefore, an NPDES permit is not required. When a Water of the U.S. is not involved, and rather waters of the State are, the applicant applies for and NDEP issues a Nevada groundwater discharge permit. Again, Artesia Lake is not a Water of the U.S.; thus, the Clean Water Act is not implicated. Furthermore, regardless of whether Artesia Lake is a Water of the U.S. or not, the permit does not allow for discharge except in the event of an overflow resulting from a 25-year 24-hour storm event or chronic storm event. Therefore, NDEP issued a proper groundwater discharge permit to the Smith Valley Dairy that does not violate the Clean Water Act.

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b. Commencing construction without a permit does not invalidate NDEP's issuance of the Smith Valley Dairy groundwater discharge permit.

On December 29, 2014, NDEP staff conducted an inspection at the Smith Valley Dairy and noted that two lined ponds had been constructed at the facility. *See* Exhibit 3. The ponds were identical to the final design plans that were submitted to NDEP as part of the discharge permit application. *Id.* In response, on December 31, 2014, NDEP issued a Cease and Desist Action to the Smith Valley Dairy indicating it must stop all construction on the dairy wastewater ponds and associated discharge structures at the location. *Id.* On January 30, 2015, the Smith Valley Dairy sent a letter in response to the Cease and Desist Action indicating the ponds were constructed in general accordance with the plans and specifications submitted to NDEP and that it would cease construction of the ponds and associated discharge structures. *Id.* On February 18, 2015, NDEP issued a Finding of Alleged Violation and Order to the Smith Valley Dairy. *Id.* As required by the Order, NDEP held a Show Cause Hearing on March 5, 2015. *Id.* As a result, NDEP determined there was no environmental impact and the response to the cease and desist was satisfactory and closed the formal enforcement. *See* Exhibit 4.

As established above, NDEP acknowledges it issued a Cease and Desist Order to the dairy followed by a Finding of Alleged Violation and Order because the dairy started construction on its ponds without a permit. NDEP further acknowledges the formal enforcement was closed because NDEP determined there was no environmental impact and it was satisfied with the response to the Cease and Desist Order. However, NDEP vehemently denies and takes exception to the unsupported allegation that "NDEP made it clear that the agency would approve a permit from the beginning, without conducting the proper testing and necessary oversight." The Appellant offers no evidence to support this baseless allegation. The Appellant's allegation that the Smith Valley Dairy suffered no repercussions for violating NRS 445A.585 is also meritless, as evidenced by the enforcement action instituted by NDEP. Furthermore, the Nevada Registered Professional Engineer stamped designs of the storage impoundments were submitted and reviewed by an NDEP Nevada Registered Professional Engineer, as evidenced by the issuance of the permit, and have been available as part of the

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file, as well as included in the documents submitted in response to Appellant's public records request. Thus, contrary to the Appellant's allegations, there is sufficient information in the record to establish the storage impoundments were designed according to standards.

Moreover, whether or not the dairy began construction on the facility prior to having a permit has no bearing on the final issuance of the discharge permit under appeal. The storage impoundments were designed and stamped by a Nevada Registered Professional Engineer, reviewed by an NDEP Nevada Registered Professional Engineer and built to the approved specifications.

c. The Permit does not allow any discharge from the facility except in the event of an overflow resulting from a precipitation event larger than the 25-year, 24-hour storm or chronic storm event.

The permit does not allow for any discharge from the facility to Artesia Lake except in the event of an overflow resulting from a precipitation event larger than the 25-year 24-hour storm or chronic storm event in accordance with NRCS standards. *See* Exhibit 2, Permit at 2, A.2.2; and Permit at 26 B.CO.2, B.CO.3. The Appellant offers no evidence to establish that the permit allows pollution discharge through a pipe, across two private residences into Artesia Lake, in violation of the Clean Water Act as alleged in Appellant's Opening Brief. To the contrary, NDEP is not aware of any such pipe. Second, contrary to the Appellant's statements, and as NDEP has already established, Artesia Lake is not a Water of the U.S.; therefore, an NPDES permit is not required. The Appellant's broad jump to the conclusion that Artesia Lake is a Water of the U.S. and a NPDES permit is required fails for lack of merit.

d. The wastewater storage impoundments are not located within the 100-year flood plan, nor are they located in a drinking water protection area.

The storage impoundments, contrary to Appellant's allegation, are not located within the 100-year flood plain. Pursuant to the Federal Emergency Management Agency ("FEMA") metadata and data from the Nevada Division of Water Resources, the Smith Valley Dairy is located in a moderate flood hazard area, labeled Zone X by FEMA. *See* Exhibit 5. Zone X areas are moderate flood hazard areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. *See* Exhibit 6. Further, as Exhibit 5 illustrates and

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contrary to Appellant's assertion, there are no groundwater protection areas impacting the Smith Valley Dairy property. Therefore, as the storage impoundments are not located in the 100-year floodplain, nor are they located in a drinking water protection area, Appellant's arguments fail for lack of merit.

However, assuming arguendo, if the storage impoundments were located in the 100-year floodplain, NDEP guidance documents, NAC 445A.285, and the permit all require the engineer, in locating the site for construction of the storage impoundments, to **attempt** to select a site that is not within a 100-year floodplain. In September of 2011, NDEP issued revised Water Technical Sheet 37 ("WTS–37"). *See* Exhibit 7. WTS–37 is a guidance document that the regulated community can utilize when designing a lined wastewater holding pond. The first page of WTS-37 contains the following disclaimer: "This document is solely intended as guidance to the regulated community. It shall not replace best professional engineering judgment in the design of a wastewater holding pond..." *Id.* Further, Item H of the "General Pond Construction Details" states "[t]he engineer shall **attempt** to not locate any ponds within the 100-year flood plain (NAC 445A.285)." (Emphasis added). Therefore, deviations from NDEP's WTS-37 guidance can occur and will be accepted by NDEP if approved by an NDEP Registered Professional Engineer pursuant to best professional engineering judgment.

Further, per section B.CO.13. of the permit, "all waste storage and treatment facilities shall be designed and constructed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; NRCS Conservation Practice Standard Code 317, Composting Facility, October 2003 or more recent; and/or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate." *See* Exhibit 2, Permit at 27, B.CO.13. Pursuant to both NRCS Conservation Practice Standard Code 313, Waste Storage Facility and NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, "if site restrictions require location within a floodplain, they shall be protected from inundation or damage from a 25-year flood event..." *See* Exhibits 8 and 9. Therefore, the NRCS Practice Standards acknowledge that

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storage impoundments may be located within a floodplain due to site restrictions. Further, if located within the floodplain, they need to be protected from damage from a 25-year flood event. Again, section B.CO.13 of the permit requires, in reference to the Waste Storage Facility Design and Construction, "[a]ll structures shall be designed, constructed, operated and maintained to contain all manure and process wastewater from the production area accumulated during the design storage period plus the direct precipitation and run-on resulting from the 25-year, 24-hour storm event." Therefore, the Appellant's argument that the location of the storage impoundments within the 100-year floodplain departs from NDEP's guidance is meritless.

e. The SEC lacks jurisdiction to consider whether the permit was issued in violation of NRS 40.140.

The Appellant claims that, due to the location and lack of protection from flood risk and groundwater intrusion, the Dairy constitutes a nuisance under NRS 40.140.

The SEC should summarily dismiss this argument as the SEC lacks jurisdiction over the location of the dairy and whether or not the activities on the dairy constitute a nuisance. Under NDEP's regulatory power, it approves the design and specifications of storage impoundments, not whether they should be constructed or not. Therefore, the issue of nuisance is outside the purview of the SEC and should be summarily dismissed.

f. The Appellant's reliance on an out-of-state Civil Engineer is not admissible.

The Appellant's Opening Brief contains excerpts from "Written Comments Regarding Smith Valley Dairy Permit Application" prepared by Kathy J. Martin, PE (OK#18254). The written comments summarily discuss deficiencies in the Smith Valley Dairy permit without any supporting evidence. The Appellant refers to Kathy J. Martin as an expert civil engineer. Again, similar to the "sampling of summary testimony" of Smith Valley residents, the written comments as presented are irrelevant, inadmissible evidence, and should not be considered by the SEC in its review of this appeal.

The Appellant's reliance on the written comments is problematic for several reasons.

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First, Kathy J. Martin is a licensed professional engineer in Oklahoma and New Mexico, not Nevada. Pursuant to NRS 625.520, it is unlawful for any person not properly licensed in Nevada to "[p]ractice, continue to practice, solicit to practice, offer to practice or attempt to practice engineering or any discipline thereof. . ." NRS 625.050 defines the practice of professional engineering to include, [a]ny professional service which involves the application of engineering principles and data, such as surveying, consultation, investigation, evaluation, planning and design..." Here, arguably, the service Ms. Martin has provided to the Appellant involved the application of engineering principles in her evaluation, investigation and consultation of the Smith Valley Dairy permit. In fact, the last page of the written comments indicates "[i]t is my professional engineering opinion that the Bureau should not issue the proposed draft permit as it is currently written..." *See* Exhibit 10. This can be construed as the unlawful practice of engineering and subject to penalties as well as injunctive relief.

In addition, the Nevada Rules of Civil Procedure set forth requirements for the disclosure of expert witnesses. Specifically, Rule 16.1 (a)(2), requires, with respect to a retained or specially employed individual to provide expert testimony, the submittal of a written report. The report shall contain:

> a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
> NRCP 16.1 (a)(2).

Whether or not Ms. Martin will be testifying and is retained or employed to provide the expert testimony remains to be seen; however, these implications must be evaluated by the SEC in determining the weight or validity of her testimony. Moreover, NDEP, as the expert agency, deserves deference to its permitting decisions that were made by Nevada Registered Professional Engineers, and to the evidence that was before it when it was engaged in the decision-making process. *State Indus. Ins. System v. Miller*, 112 Nev. 1112, 1118, 923 P.2d

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577, 581 (Nev. 1996). Regardless of Ms. Martin's statements, NDEP's issuance of the permit was not arbitrary or capricious, and contains no deficiencies or siting and design errors.

B. Due process was properly followed.

a. Citizens were given ample opportunity to participate in the permitting process.

NDEP complied with the Nevada Public Records Law, as well as the statutory and regulatory public notice requirements. As demonstrated below, the citizens were never denied access to the public records, the citizens were given more time than statutorily required to provide public comment, and the permit issuance was lawful.

NDEP is required to make certain documents available for public inspection and copying. Specifically, NRS 445A.665 sets forth, in relevant part, any records, reports or information obtained under Nevada's Water Pollution Control Law must be made available to the public for inspection and copying. In August of 2014, a member of the public verbally requested a copy of the Smith Valley Dairy permit application. NDEP responded that due to the permit being in draft form, NDEP was not yet able to provide the application to the individual. *See* Exhibit 11. Approximately one month later, September of 2014, the same member of the public inquired about the status of the permit application and indicated she felt it was a public record. *See* Exhibit 12. After reviewing its prior decision, NDEP requested that she submit a formal record request for the permit application. *See* Exhibit 13. It was not until November of 2014, approximately two months after NDEP indicated she could submit a formal request, that NDEP received the actual public record request for the draft permit application. *See* Exhibit 14. After NDEP received the request, staff quickly responded to it within the five business days as required under NRS 239.0107 and provided the requested documents to Nevada Blue for copying and distribution to the requester.[4] *See* Exhibit 15.

NDEP never barred access to the documents as the Appellant alleges. To the contrary, on several occasions members of the public visited NDEP to ask questions and review the file and all documents associated with the Smith Valley Dairy. *See* Exhibit 16.

[4] Pursuant to NDEP's policy contained in the Division Administrative Manual, this is the normal course of business for copying documents. Section 2706.0 (4)

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NDEP was understandably cautious of providing copies of a draft document that would inevitably change numerous times prior to finalization so as to avoid unnecessary confusion; however, NDEP never barred the public from accessing the documents. The citizens had ample opportunity to review the file and comment on the proposed draft permit. In fact, NDEP extended the public comment period to a total of 59 days, 29 more days than statutorily required, contrary to the Appellant's contention that the public was denied public process. The Appellant further leaps to the conclusion that the failure to comply with the public records law makes the permit issuance unlawful. There is no basis in law for that assertion. More importantly, NDEP complied with the Nevada Public Records Law and the issuance of the permit was lawful.

The Appellant further contends that when NDEP finally provided the records for copying, that NDEP provided incomplete records as pages were missing and letters and email attachments were excluded. On January 3, 2015, it was brought to NDEP's attention that only the odd pages were copied from the permit application. *See* Exhibit 17. It appeared the copying service, Nevada Blue, failed to copy the double sided documents resulting in only the odd pages being copied from the permit application. NDEP immediately responded and forwarded the missing side of the double sided documents two days after it was brought to their attention. *Id.* Further, although it appeared that pages were also missing from the documents provided due to the pagination, it was determined that nothing was missing from the documents. When AGPROfessionals, on behalf of the Smith Valley Dairy, submitted all of the documents together, the NMP, the AMMP, and the MPNC, to NDEP to complete the permit application, the documents were numbered individually rather than together as one document. Therefore, it was determined and conveyed to the Appellant that the pagination on items in the documents was causing confusion. *See* Exhibit 18. Accordingly, NDEP corrected the pagination of the items and provided them on January 9, 2015, proving that nothing was missing from the original documents submitted. *Id.*

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b. The Appellant timely received the Storm Water Pollution Prevention Plan.

On August 28, 2014, a citizen requested a copy of the facility's Storm Water Pollution Prevention Plan ("SWPPP"). *See* Exhibit 19. On the same day, NDEP responded that NDEP does not require the contractors to turn in hard copies of the SWPPP for the file; instead they maintain the plan on site for NDEP's review. *Id.* Per NDEP's policy and the terms of the permit, the SWPPP is not required to be submitted to NDEP, unless NDEP requests it. *See* Exhibit 20. NDEP was following its usual practice and permit terms regarding retention of the SWPPP. On December 27, 2014, the same citizen requested NDEP request the SWPPP from the Smith Valley Dairy and send a copy of the SWPPP to her. *See* Exhibit 21. On December 31, 2014, NDEP forwarded an electronic copy of the SWPPP to the citizen that requested it. *Id.* Although, NDEP was not required to have the SWPPP on file, NDEP staff went above and beyond to accommodate the individual, including a site visit to the dairy, to obtain a copy of the SWPPP. *Id.* Therefore, the Appellant's contention that it did not receive the SWPPP timely is meritless.

c. The public comment period was extended to accommodate the public.

Pursuant to NRS 445A.595, NDEP is required to provide public notice of the hearing at least 30 days in advance of the hearing. Further, per NAC 445A.234, NDEP must provide at least 30 days following the date of the public notice where interested persons may submit written comments on the tentative determinations regarding the permit application. Due to a significant degree of interest in the Smith Valley Dairy permit, NDEP decided to hold a public hearing to gather additional public input regarding the draft permit. However, contrary to the Appellant's baseless assertion that NDEP delayed the public comment period to coincide with the holiday season (Christmas), NDEP actually delayed the public notice to avoid interfering with the Thanksgiving Holiday. Further, to accommodate the citizens of Smith Valley, NDEP set the 30-day notice of the public hearing to coincide with the closure of the Smith Valley School for Christmas break. This allowed NDEP to hold the public hearing at the Smith Valley School on January 7, 2015, to accommodate the citizens of Smith Valley and to ensure citizen access to the hearing. Further, because of the timing, NDEP extended the comment period

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another 21 days to January 30, 2015. NDEP allowed the public to comment on the proposed permit for a total of 59 days, 29 more days that statutorily required. Subsequently, on March 9, 2015, after taking the public comments into consideration and revising the draft permit, NDEP issued its Notice of Decision to issue groundwater discharge permit NS2014502. *See* Exhibit 22. Regardless of when NDEP published the Public Notice, NDEP complied with NRS 445A.595 and NAC 445A.234 by providing public notice of the hearing at least 30 days before the hearing date and providing the public ample time to comment.

d. NDEP sufficiently responded to the public comment.

NAC 445A.234 requires that all written comments submitted during the 30-day comment period to be considered in the formulation of NDEP's determination regarding the permit application. NDEP complied with NAC 445A.234. NDEP fully addressed all public comments and did make changes to the permit based on those comments. In fact, there were considerable changes made between the draft permit and the final permit. For example, an additional monitoring well was added to the final permit requirements. Further, several of the comments were outside of NDEP's jurisdiction and NDEP responded as such. Therefore, the Appellant's argument that NDEP provided minimal response to the public comment lacks merit and has no basis in law. Again, NDEP complied with Nevada law.

C. NDEP issued the Smith Valley Dairy permit in compliance with the law and is entitled to deference.

NDEP's decision to issue the permit should be given deference rather than the Appellant's unfounded opinions. An administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws and set necessary precedent to administrative action . . . the construction placed on a statute by the agency charged with administering it is entitled to deference. . . so long as its interpretations of the laws are "reasonable" and "consistent with legislative intent." *State Indus. Ins. System v. Miller*, 112 Nev. 1112, 1118, 923 P.l2d 577, 581 (Nev. 1996). NDEP is charged with regulating all discharges to waters of the State through issuing discharge permits. NDEP's standard for review and approval of the Smith Valley Dairy permit was reasonable as it was

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prepared in accordance with NRS 445A.300 to NRS 445A.730, Nevada Water Pollution Control Law, and NAC 445A.228 through NAC 445A.263, as well as NRCS Conservation Practice Standard Codes. *See* Exhibit 2, Permit at 27, B.CO.13. Moreover, if the permit were remanded to NDEP for further consideration, as the Appellant requests, nothing would change because NDEP would again apply these same standards. Therefore, NDEP's decision to issue the permit was not erroneous or arbitrary and capricious as the Appellant contends, and should be given deference over the Appellant's request to remand the permit for further consideration.

CONCLUSION

A. The Appellant's appeal should be dismissed because the Appellant fails to raise any grounds that would form a basis for modifying or denying the permit.

The Appellant's argument that the Smith Valley Dairy permit should be remanded for further consideration lacks merit. NDEP issued a groundwater discharge permit that meets or exceeds all State, and Federal CAFO regulations. NDEP required four monitoring wells to be installed at the Smith Valley Dairy and groundwater monitoring to be performed. The storage impoundments were designed and stamped by a Nevada Registered Professional Engineer, reviewed by an NDEP Nevada Registered Professional Engineer and built to the approved specifications. NDEP approved the Smith Valley Dairy's Nutrient Management Plan as sufficient according to national standards recognized by the EPA. NDEP requires the Smith Valley Dairy to implement the NDEP approved Animal Mortality Management Plan, as well as the Management Plan for Nuisance Control. Further, the Smith Valley Dairy has committed to storing all future silage on concrete.

The Appellant's argument that the public was denied access and a meaningful public process also fails. NDEP's strict adherence to applicable regulations allowed all citizens the opportunity to participate in every step of the permitting process. In fact, NDEP was more generous than statutorily required in extending the public comment period and never denied the public access to the records.

NDEP requests the State Environmental Commission consider that NDEP's permit for

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Carson City, NV
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the Smith Valley Dairy meets or exceeds the statutory and regulatory standards and was properly issued by NDEP. The Appellant presents no evidence that NDEP acted arbitrarily or capriciously or otherwise abused its discretion when issuing the permit. Therefore, NDEP respectfully requests that the SEC dismiss this appeal.

DATED this 5th day of June, 2015.

ADAM PAUL LAXALT
Attorney General

By: _____
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Attorneys for Plaintiff, State of Nevada,
Conservation & Natural Resources,
Division of Environmental Protection

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 5th day of June, 2015, I served a copy of the foregoing Nevada Division of Environmental Protection's Response to Opening Brief of Save Our Smith Valley, Inc., by email and U.S. mail to the following:

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Intervenors

Val King
Executive Secretary
State Environmental Commission
vking@ndep.nv.gov

Employee of the State of Nevada
Office of the Attorney General

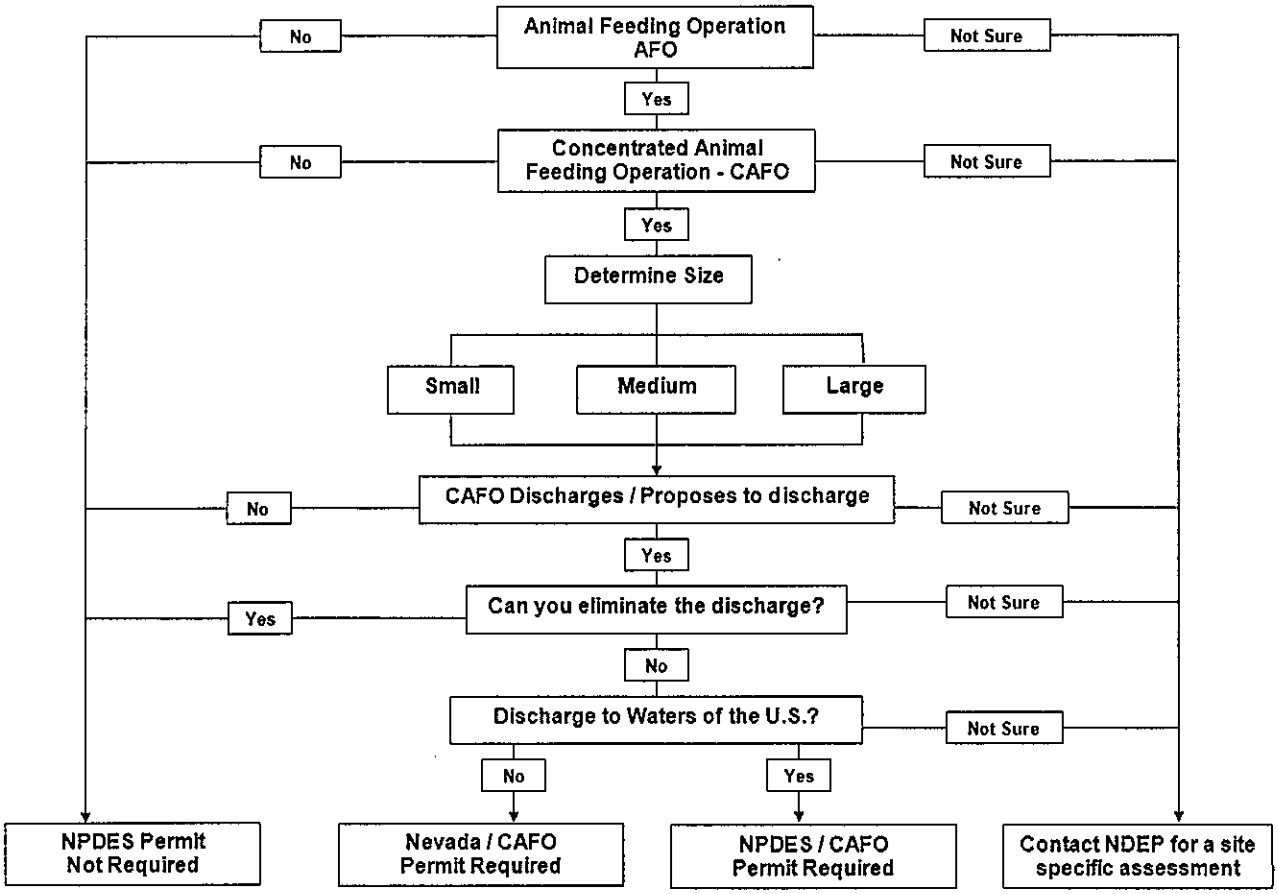
EXHIBIT 1

EXHIBIT 1

State of Nevada
Nevada Division of Environmental Protection
Bureau of Water Pollution Control
901 So. Stewart Street, Suite 4001, Carson City NV 89701-5249

Note: Click the highlighted text for definitions; the files are in Adobe PDF format

CAFO FLOW CHART



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Last updated 07/15/2010 10:47:23

EXHIBIT 2

EXHIBIT 2

Permit Type: Groundwater Discharge

Permit No. NS2014502

Nevada Division of Environmental Protection

AUTHORIZATION TO DISCHARGE

In compliance with Chapter 445A of the Nevada Revised Statutes,

SMITH VALLEY DAIRY
P.O. BOX 367
CHOWCHILLA, CA - 93610

is authorized to discharge from a facility located at:

SMITH VALLEY DAIRY
40 HUNEWILL LANE, WELLINGTON, NV - 89444
LATITUDE: 38.878481, LONGITUDE: -119.379716
TOWNSHIP: T12N, RANGE: R23E, SECTION: S26

to receiving waters named:

WATERS OF THE STATE

in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Sections A, B, and C hereof.

This permit shall become effective on March 09, 2015.

This permit and the authorization to discharge shall expire at midnight, March 08, 2020.

Signed this 9th day of March 2015.

Michele Reid
Staff I Associate Engineer
Bureau of Water Pollution Control

SECTION A

A.1. Introduction:

A.1.1. Smith Valley Dairy is a new dairy facility located approximately 6 miles NE of Smith, NV at 40 Hunewill Lane, Sec 26, T12N, R23E, Lyon County Nevada. Dairy construction is industry-typical open corrals with pipe and cable fence, concrete feed aprons and feed bunks, feed alleys and cow movement alleys, feed storage areas and associated storage structures, maintenance facilities, and waste managment/control structures. The maximum capacity at the 140-acre facility will be 7,248 head combined cows, heifers and calves.

A.2. Effluent Limitations, Monitoring Requirements And Conditions:

A.2.1. There shall be no discharge from the facility property except as authorized by this permit.

A.2.2. During the period beginning on the effective date of this permit, and lasting until the permit expires, the Permittee is authorized to:

-discharge manure and process wastwater to land application areas in accordance with a Division reviewed Nutrient Managment Plan (NMP); and -discharge manure and process wastewater in response to storm events or chronic rainfall events that exceed the 25-year 24-hour storm design, provided that the production area is operated in accordance with parts B.CO.3, B.CO.28 and B.CO.29 of this permit.

Effluent samples and measurements taken in compliance with the monitoring requirements specified below shall be taken at:

Sample Location	Location Type	Location Name
001	Internal Outfall	DAIRY TOTALS
002	Internal Outfall	DAIRY LAGOON NORTH
003	Internal Outfall	DAIRY LAGOON SOUTH
004	Monitoring Well	MONITORING WELL #1
005	Monitoring Well	MONITORING WELL #2
006	Monitoring Well	MONITORING WELL #3
007	Surface Disposal Site	DEAD ANIMAL COMPOST
008	External Outfall	STORMWATER DISCHARGE
009	External Outfall	CORRAL/SEPARATOR MANURE TESTING AND TRANSFER
010	Monitoring Well	MONITORING WELL #4

The discharge shall be limited and monitored by the Permittee as specified below. As applicable, exceptions to standard language in this permit are identified and authorized in the Special Approvals / Conditions table:

Groundwater Monitoring Wells Table for Sample Location 004 (Monitoring Well) To Be Reported Quarterly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Depth to water level ft below landsurface	Daily Maximum	M&R Feet (ft)		Groundwater	004	Quarterly	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	004	Quarterly	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Groundwater	004	Quarterly	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Groundwater	004	Quarterly	DISCRT
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	004	Quarterly	DISCRT
Nitrogen, total	Daily Maximum		<= 10 Milligrams per Liter (mg/L)	Groundwater	004	Quarterly	DISCRT

Groundwater Monitoring Wells Table for Sample Location 005 (Monitoring Well) To Be Reported Quarterly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Depth to water level ft below landsurface	Daily Maximum	M&R Feet (ft)		Groundwater	005	Quarterly	DISCRT
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	005	Quarterly	DISCRT
Nitrogen, total	Daily Maximum		<= 10 Milligrams per Liter (mg/L)	Groundwater	005	Quarterly	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	005	Quarterly	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Groundwater	005	Quarterly	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Groundwater	005	Quarterly	DISCRT

Groundwater Monitoring Wells Table for Sample Location 006 (Monitoring Well) To Be Reported Quarterly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	006	Quarterly	DISCRT
Depth to water level ft below landsurface	Daily Maximum	M&R Feet (ft)		Groundwater	006	Quarterly	DISCRT
Nitrogen, total	Daily Maximum		<= 10 Milligrams per Liter (mg/L)	Groundwater	006	Quarterly	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	006	Quarterly	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Groundwater	006	Quarterly	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Groundwater	006	Quarterly	DISCRT

Groundwater Monitoring Wells Table for Sample Location 010 (Monitoring Well) To Be Reported Quarterly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Depth to water level ft below landsurface	Daily Maximum	M&R Feet (ft)		Groundwater	010	Quarterly	DISCRT
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	010	Quarterly	DISCRT
Nitrogen, total	Daily Maximum		<= 10 Milligrams per Liter (mg/L)	Groundwater	010	Quarterly	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Groundwater	010	Quarterly	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Groundwater	010	Quarterly	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Groundwater	010	Quarterly	DISCRT

CAFO Discharge Limitations Table for Sample Location 001 (Dairy Totals) To Be Reported Monthly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Flow rate	30 Day Average	<= 0.80 Million Gallons per Day (Mgal/d)		Internal Monitoring Point	001	Weekly	METER
Animals, total estimated no. of	30 Day Average		M&R Number (#)	Internal Monitoring Point	001	Monthly	CALCTD

CAFO Discharge Limitations Table for Sample Location 001 (Dairy Totals) To Be Reported Quarterly

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Manure, wet tons removed	30 Day Average		M&R Wet Tons (wet ton)	Internal Monitoring Point	001	Quarterly	ESTIMA
Manure, wet tons total	30 Day Average		M&R Wet Tons (wet ton)	Internal Monitoring Point	001	Quarterly	ESTIMA

CAFO Discharge Limitations Table for Sample Location 002 (Dairy Lagoon North) To Be Reported Semi Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Prior to Irrigation	002	Semiannual	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Prior to Irrigation	002	Semiannual	DISCRT
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Semiannual	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Semiannual	DISCRT
Nitrogen, total	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Semiannual	DISCRT
Phosphorus, total (as P)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Semiannual	DISCRT

CAFO Discharge Limitations Table for Sample Location 002 (Dairy Lagoon North) To Be Reported Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Solids, total suspended	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Annual[1]	DISCRT
BOD, 5-day	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	002	Annual[1]	DISCRT

Notes (CAFO Discharge Limitations Table):

1. Annual measurements shall be conducted in the 4th quarter of each calendar year and submitted with the annual report.

CAFO Discharge Limitations Table for Sample Location 003 (Dairy Lagoon South) To Be Reported Semi Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Semiannual	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Semiannual	DISCRT
Nitrogen, total	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Semiannual	DISCRT
Phosphorus, total (as P)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Semiannual	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Prior to Irrigation	003	Semiannual	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Prior to Irrigation	003	Semiannual	DISCRT

CAFO Discharge Limitations Table for Sample Location 003 (Dairy Lagoon South) To Be Reported Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Solids, total suspended	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Annual[1]	DISCRT
BOD, 5-day	Daily Maximum		M&R Milligrams per Liter (mg/L)	Prior to Irrigation	003	Annual[1]	DISCRT

Notes (CAFO Discharge Limitations Table):

1. Annual measurements shall be conducted in the 4th quarter of each calendar year and be submitted with the annual report.

CAFO Discharge Limitations Table for Sample Location 007 (Dead Animal Compost) To Be Reported Semi Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Internal Monitoring Point	007	Semiannual	COMPOS
Nitrogen, total	Daily Maximum		M&R Milligrams per Liter (mg/L)	Internal Monitoring Point	007	Semiannual	COMPOS
Phosphorus, total (as P)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Internal Monitoring Point	007	Semiannual	COMPOS
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Internal Monitoring Point	007	Semiannual	COMPOS

CAFO Discharge Limitations Table for Sample Location 008 (Stormwater Discharge) To Be Reported Annually[1][2]

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Chloride (as Cl)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
Solids, total dissolved	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
Solids, total suspended	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
BOD, 5-day	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
Nitrogen, total	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
Phosphorus, total (as P)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Receiving Water	008	Report	DISCRT
Coliform, fecal general	Daily Maximum		M&R Most Probable Number per 100ml T (MPN/100mL)	Receiving Water	008	Report	DISCRT
Flow, total	Daily Maximum	M&R Million Gallons (Mgal)		Receiving Water	008	Report	DISCRT
pH, maximum	Daily Maximum		M&R Standard Units (SU)	Receiving Water	008	Report	DISCRT
pH, minimum	Daily Minimum		M&R Standard Units (SU)	Receiving Water	008	Report	DISCRT

Notes (CAFO Discharge Limitations Table):

1. The Permittee shall report date and time of each discharge and collect the sample within 30 minutes of first knowledge of the stormwater discharge. If sampling in that period is not possible due to dangerous weather conditions, the Permittee shall collect the sample as soon as possible after suitable conditions occur. Reason for the sampling delay shall be documented.
2. Sampling of the representative stormwater discharge shall occur at the point where the overflow first reaches a water of the State. Waters of the State are defined in NRS 445A.415.

CAFO Discharge Limitations Table for Sample Location 009 (Corral/Separator Manure Testing And Transfer) To Be Reported Annually

Discharge Limitations				Monitoring Requirements			
Parameter	**Base**	**Quantity**	**Concentration**	**Monitoring Loc**	**Sample Loc**	**Measurement Frequency**	**Sample Type**
Manure, wet tons removed	Annual Total		M&R Tons (ton)	Internal Monitoring Point	009	Annual	CALCTD
Nitrogen, total	Daily Maximum		M&R Milligrams per Liter (mg/L)	Internal Monitoring Point	009	Annual	DISCRT
Phosphorus, total (as P)	Daily Maximum		M&R Milligrams per Liter (mg/L)	Internal Monitoring Point	009	Annual	DISCRT

Crop Rotation Table

Field	Area (acres)	Crop In Year 2015	2016	2017	2018	2019	2020
SEE ATTACHED NMP SMITH VALLEY DAIRY CAFO NUTRIENT MANAGEMENT (NMP) AND OPERATIONS/MAINTENANCE PLAN, SEPTEMBER 3, 2013, APPENDIX B, NMP TERMS, 2) LAND APPLICATION INFORMATION, TABLE B-2	1636	VARIES	VARIES	VARIES	VARIES	VARIES	

CAFO Nutrient Management Plan (NMP) Table

Field	Area (acres)	Crop	Design Yield (tons/acre)	Hazard Class	Liquid Applied (Million Gallons)	Nitrogen Applied (lbs/acre)	Irrigation Method	Other N Sources	Application Timing
SEE ATTACHED NMP SMITH VALLEY DAIRY CAFO NUTRIENT MANAGEMENT (NMP) AND OPERATIONS/MAINTENANCE PLAN, SEPTEMBER 3, 2013, APPENDIX B, NMP TERMS, 2) LAND APPLICATION INFORMATION, TABLES B-1-A AND B-1-B	0	VARIES	0		0	0	VARIES	VARIES	VARIES

A.3. Schedule of Compliance

The Permittee shall implement and comply with the provisions of the schedule of compliance after approval by the Administrator, including in said implementation and compliance, any additions or modifications, which the Administrator may make in approving the schedule of compliance. All compliance deliverables shall be addressed to the attention, Bureau of Water Pollution Control:

SOC – Schedule of Compliance Table

Item #	Description	Due Date
1	Within 30 days of permit issuance, the Permittee shall submit to NDEP for review baseline sampling data for Groundwater. The Permittee shall sample for the following parameters: 1. Depth to water level below land surface (ft). 2. Solids, total dissolved (mg/L). 3. pH (SU). 4. Chloride (as Cl) (mg/L). 5. Total Nitrogen (mg/L)	4/8/2015
2	The Permittee shall submit copies of the well logs and as-built drawings for the completed monitoring wells MW-1, MW-2, MW-3, and MW-4.	6/7/2015

SA – Special Approvals / Conditions Table

Item #	Description
1	Part A, Section A.6 does not apply to this permit. A Certified Operator is not required for this facility.
2	Part B.CO.23 - Soil sampling shall be conducted in accordance with Part IX of the Division reviewed Nutrient Management Plan (NMP) and results shall be submitted to the Division as part of the annual report.
3	Part C, Section C.2 - does not apply to this permit. Operations and Maintenance of this facility are specifically identified in the Division reviewed NMP.
4	Part C, Section C.13 - does not apply to this permit. This section is for biosolids management from treatment facilities. Manure management at this facility is specifically addressed in the Division reviewed NMP.
5	Part C, Section C.32.2 - applies only to Swine, Veal, and Poultry CAFO operations.
6	As indicated in the NMP Part III: Collection Function Requirements - The total required storage period for 5 months (Nov. - Mar.) process water (40 ac-ft), runoff from the 25-year, 24-hour storm event(15.4 ac-ft), and direct precipitation on the ponds is 55.4 ac-ft. Sludge storage and extra working capacity is 16.9 ac-ft. The total operational capacity of the lagoons is 72.3 acre-feet. Transfer Function Requirements - Manure may be stockpiled in and around the pens and in places of the facilty's production area that drain to the wastewater impoundments. Manure may also be transfered to a third party.
7	The Permittee shall maintain compliance with the Management Plan for Nuisance Control (MPNC) submitted to and reviewed by the Division. Any changes to the MPNC for Odor Control, Dust Control, or Pest Control shall be submitted to the Division for review prior to implementing the changes.
8	The SV Dairy NMP is based on the "narrative rate approach" and provides for changes to crop rotation without permit modification provided the crop and nutrient application parameters are identified in the NMP.
9	Part B, Section B.CO.4 - does not apply to this permit. Applies to Swine, Poultry and Veal Calf operations only.
10	Part C, Section C.1.35 does not apply to this permit. This section references treatment of domestic sewage in treatment works.
11	Part C, Section C.1.41 - does not apply to this permit. This section references land application of domestic sewage.
12	Part C, Section C.27 - The Permittee is not required to submit sludge information listed in 40 CFR 501.15 (a) (2) with their renewal application.
13	Part C, Section C.34 does not apply to this facility. This facility does not recieve pollutants from indirect dischargers.
14	Part C, Section C.35 does not apply to this facity. The section references federal CWA permit regulations.

DLV– Deliverable Schedule for Reports, Plans, and Other Submittals

Item #	Description	Interval	First Scheduled Due Date
1	Discharge Monitoring Reports	Quarterly	4/28/2015
2	Discharge Monitoring Reports	Semi Annually	7/28/2015
3	Annual Report	Annually	1/28/2016

A.4. MONITORING AND REPORTING:

A.4.1. Sampling and measurements: Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge and must comply with any Division approved sampling plan as required by the Schedule of Compliance. Analyses shall be performed by a State of Nevada certified laboratory. Results from this lab must accompany the Discharge Monitoring Report.

A.4.2. Annual Report: The fourth quarter report shall contain plots of concentration (y-axis) versus date (x-axis) for each analyzed constituent identified in the Monitoring Table. The plots shall include data from the preceding five years, if available. Any data point from the current year that is greater than the limits identified in the applicable tables and conditions above must be explained by a narrative.

A.4.3. Quarterly Reporting: Monitoring results obtained during the previous three (3) months shall be summarized for each month and reported on a Discharge Monitoring Report (DMR) Form received in this office no later than the 28th day of the month following the completed reporting period. The first report is due on April 28, 2015. An original signed copy of these, and all other reports required herein, shall be submitted to the State at the following address:

Division of Environmental Protection
Bureau of Water Pollution Control
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

A.4.4. Discharge Monitoring Reports: Analytical data and monitoring results shall be summarized and/or tabulated for presentation in standardized Discharge Monitoring Reports (DMRs). Laboratory reports for quantitative analyses conducted by State of Nevada certified laboratories must accompany DMR submittals.

A.4.5. Schedule: DMRs shall be received by the 28th day of the month following the third month of each quarter (reporting period). Quarterly and annual reporting periods are based on the standard annual cycle, January 1 through December 31. The first report is due on April 28, 2015. If no discharge occurs during the reporting period, report "no discharge" on the submitted DMR.

A.4.6. Recording the Results: For each measurement or sample taken pursuant to the requirements of this permit, the Permittee shall record the following information:

A.4.6.1. The exact place, date, and time of sampling;

A.4.6.2. The dates the analyses were performed;

A.4.6.3. The person(s) who performed the analyses;

A.4.6.4. The analytical techniques or methods used; and

A.4.6.5. The results of all required analyses.

A.4.7. Additional Monitoring by Permittee: If the Permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated.

A.4.8. Test Procedures: Test procedures for the analysis of pollutants shall conform to regulations (40 CFR, Part

136) published pursuant to Section 304(h) of the Act, under which such procedures may be required unless other procedures are approved by the Division. Other procedures used may be:

A.4.8.1. Selected from SW-846;

A.4.8.2. Selected from 40 CFR 503; or

A.4.8.3. An alternate test procedure approved by the Nevada Division of Environmental Protection, Environmental Laboratory Services.

A.4.8.4. All laboratory analyses conducted in accordance with this discharge permit must have detection at or below the permit limits.

A.4.8.5. All analytical results must be generated by analytical laboratories certified by the state of Nevada laboratory certification program

A.4.9. **Reporting Limits:** Unless otherwise approved by the Division, the approved method of testing selected for analysis must have reporting limits which are:

A.4.9.1. Half or less of the discharge limit; or, if there is no limit,

A.4.9.2. Half or less of the applicable water quality criteria; or, if there is no limit or criteria,

A.4.9.3. The lowest reasonably attainable using an approved test method.

A.4.9.4. This requirement does not apply if a water quality standard is lowered after the issuance of this permit; however, the Permittee shall review methods used and by letter notify the division if the reporting limit will exceed the new criterion, and if so the Division may reopen the permit to impose new monitoring requirements.

A.5. **Fees**

A.5.1. The Permittee shall remit an annual review and services fee in accordance with NAC 445A.232 starting July 01, 2015 and every year thereafter until the permit is terminated.

A.6. **Certified Operators**

A.6.1. The facility shall be operated by a Nevada Certified Class Operator (or higher) of classification

[X] None, [ ] Grade 1, [ ] Grade 2, [ ] Grade 3, or [ ] Grade 4.

A.7. **Water Quality Standards:** There shall be no discharge of substances that would cause the groundwater quality to degrade below drinking water standards.

A.8. **Visibility Parameters:** There shall be no discharge of floating solids or visible foam in other than trace amounts.

A.9. **Solid Waste Management:** All solid, toxic, or hazardous waste shall be properly handled and disposed of pursuant to applicable laws and regulations. Any sludge generated during this operation shall be characterized and disposed of in accordance with local, State, and Federal regulations.

A.10. **Presumption of Possession and Compliance:** Copies of this permit, any subsequent modifications, and the O&M Manual shall be maintained at the permitted facility at all times.

A.11. **Records Retention:** All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation, and recordings from continuous monitoring instrumentation, shall be retained for a minimum of five (5) years, or longer if required by the Administrator.

A.12. **Other information:** Where the Permittee becomes aware of failure to submit any relevant facts in a permit application or the submittal of incorrect information in a permit application or in any report to the Administrator, the Permittee shall promptly submit such facts or information.

A.13. **Prerogative to Reopen:** There shall be no discharge of substances that would cause a violation of water quality standards of the State of Nevada as defined by the permit. The permit may be reopened, and additional limits imposed, if it is determined that the discharge is causing a violation of ambient water quality standards of the State of Nevada.

SECTION B

Site specific requirements are on the following pages:

B.MW. Monitoring Wells:

B.MW.1. Discrete groundwater samples shall be collected to confirm the effective protection of groundwater under the established discharge conditions of this permit.

B.MW.2. All wells shall be monitored in accordance with the parameters identified in the Groundwater Monitoring Well Table(s).

B.MW.3. Increasing concentrations of total nitrogen as nitrogen (-N) in groundwater samples invoke the following response requirements:

B.MW.3.1. If the total nitrogen-N concentration increases to 7.0 mg/L, an alternate method of process wastewater and/or manure storage must be prepared and submitted to the Division for review and approval;

B.MW.3.2. If the total nitrogen-N concentration increases to 9.0 mg/L, construction of the approved alternate process wastewater and/or manure storage facility shall begin; and

B.MW.3.3. If the total nitrogen-N concentration increases to 10.0 mg/L, discharge to groundwater shall cease unless authorized with written approval from the Division.

B.MW.4. To continue discharges under the terms of this permit, the Permittee may submit for review and approval an alternative approach, stamped by a Nevada Registered Professional Engineer, that ensures no further degradation of waters of the State.

B.MW.5. Groundwater monitoring and data rendering activities shall be conducted by, or under the supervision of, an Environmental Manager certified in the State of Nevada, or other qualified person approved by the Division

B.MW.6. Groundwater monitoring wells shall be conspicuously labeled, capped to prevent migration of surface contaminants to the groundwater, and locked to restrict access.

B.MW.7. **Well Abandonment:** Abandonment of any groundwater monitoring wells shall be conducted under the approval of, and in accordance with the requirements established by, the Division and the Division of Water Resources.

B.CO. Concentrated Animal Feeding Operations (CAFO)

B.CO.1. There shall be no discharge to surface Waters of the State of Nevada except as authorized by this permit.

B.CO.2. There shall be no discharge of manure, process water or other pollutants or nutrients from the production area to surface Waters of the State of Nevada, with the exception of pollutants in an overflow that may occur when a storm greater than a 25-year, 24-hour storm event or a chronic rainfall event causes an overflow from the pond or the production area provided that the production area is operated in accordance with B.CO.3, B.CO.29, and B.CO.30 of this permit.

B.CO.3. Facilities and their production area must be properly designed, constructed, operated, and maintained to contain manure, pollutants, direct precipitation, and the runoff from a 25-year, 24-hour storm event.

B.CO.4. New source performance standards (NSPS) for Swine, Poultry and Veal Calf CAFO operations must be designed so that there is no discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area.

B.CO.5. All clean water shall be diverted from the production area.

B.CO.6. Confined animals shall be prevented from coming in direct contact with surface Waters of the State.

B.CO.7. Chemicals and other contaminants handled on-site shall not be disposed of in any manure, litter, process water, or storm water storage or treatment systems unless specifically designed to treat such chemicals and other contaminants.

B.CO.8. **Nutrient Management Plan (NMP):** The facility shall be operated in accordance with a Division-approved NMP. The NMP shall be prepared in accordance with Natural Resource Conservation Service (NRCS) Conservation Practice Standard Code 590 Nutrient Management, June 2002 or more recent, and NRCS Conservation Practice Standard Code 633 Waste Utilization, October 2003 or more recent, and with all other requirements of this permit. The NMP shall be signed by the Permittee and shall contain provisions that address the following criteria:

B.CO.8.1. Ensure adequate storage and handling of manure and process wastewater including procedures to ensure proper operation and maintenance of the storage facilities;

B.CO.8.2. Identify site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices to control runoff to surface Waters of the State;

B.CO.8.3. Identify protocols for appropriate testing of manure, process wastewater, and soil;

B.CO.8.4. Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater; and

B.CO.8.5. Identify specific records that shall be maintained to document the implementation and management of the minimum elements described in the NMP and this part.

B.CO.9. **NMP Updates:** Whenever the facility makes a substantive change in how it manages the operation, including the location, method, timing, or frequency of land application, the Permittee shall amend the NMP and submit it for review and approval to NDEP. These changes may require a major modification of the permit.

B.CO.10. Changes to the proposed crop rotation may be done under minor or major modification of the permit depending on the nature of the proposed change.

B.CO.11. Nutrient Management:

B.CO.11.1. The Permittee shall apply manure and process wastewater at agronomic rates and shall follow sound agricultural irrigation practices and BMPs for the land application of manure and process wastewater.

B.CO.11.2. Tail water, if present, shall be collected in sumps and returned to the lined process wastewater pond.

B.CO.11.3. All nutrients shall be applied in a manner that is consistent with the Division-approved NMP.

B.CO.11.4. Changes in crop rotation and/or nutrient land application rates: Changes to the crop rotation and/or nutrient land application rates may be done under the following conditions:

B.CO.11.4.1. Crop rotation and/or nutrient land application rates may be adjusted in order to account for changes in operational conditions – including nutrient levels encountered during soil testing;

B.CO.11.4.2. Any adjustments to crop rotation and/or nutrient land application rates must be first revised in the facilities' NMP and O&M manual;

B.CO.11.4.3. All proposed crop rotation and/or nutrient land application rate changes shall be documented along with the test results demonstrating their applicability;

B.CO.11.4.4. A revised copy of the facilities' NMP and O&M manual must be provided to the division for approval at least 30 day prior to its implementation; and

B.CO.11.4.5. Adjustments to crop rotation and/or nutrient land application rates may be done as a permit "minor modification".

B.CO.12. Nevada Division of Water Resources (NDWR):

B.CO.12.1. All terms and conditions of this permit shall not supersede the requirements of the Nevada Division of Water Resources (NDWR) or any other state or federal agency.

B.CO.12.2. The Permittee shall contact the NDWR to determine if there are any water rights holders downstream from the site that may be impacted by the site.

B.CO.12.3. The Permittee shall contact NDWR to determine if any proposed or existing water impoundment structures will require permits pursuant to NAC Chapter 535 inclusive.

B.CO.13. Waste Storage Facility Design and Construction: All waste storage and treatment facilities shall be designed and constructed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; NRCS Conservation Practice Standard Code 317, Composting Facility, October 2003 or more recent; and/or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate. All waste storage and treatment facilities shall include a staff gage or other method of determining the available storage capacity of the impoundment. All structures shall be designed, constructed, operated, and maintained to contain all manure and process wastewater from the production area accumulated during the design storage period plus the direct precipitation and run-on resulting from the 25-year, 24-hour storm event.

B.CO.14. **Facility Specifications:** The waste collection, storage, and treatment facilities shall be constructed in conformance with plans approved by the Division. The plans must be approved by the Division prior to initiating construction activities. All changes to approved plans must be approved by the Division prior to implementation.

B.CO.15. **Heavy Use Area Protection:** The Permittee shall construct all new and renovated intensively used areas in accordance with NRCS Conservation Practice Standard Code 561, October 2003 or more recent.

B.CO.16. **Land Application Setback Requirements:** There shall be no application of manure or process wastewater within 100 feet of any down-gradient surface water of the State. A 35-foot vegetated buffer to any down-gradient water of the State where applications of manure or process wastewater are prohibited may be utilized as an alternative to the 100-foot setback requirement. The establishment and maintenance of the setback must be described in the B.NMP.

B.CO.17. **Dry Weather Discharges:** Dry weather discharges of manure and/or process wastewater to surface waters of the State are prohibited from production and land application areas.

B.CO.18. **Stormwater Management:** Except as allowed by this permit, Nevada Water Quality Standards shall not be exceeded. Any overflow that occurs in accordance with this section shall be reported to the Bureau of Water Pollution Control and shall be noted in the operating records for the facility.

B.CO.19. **Outfall Observance:** The Permittee shall visually monitor the outfall(s) every six hours during discharge by observing the receiving surface water at the point of discharge to determine if there is any visible effect to the receiving water from the discharge. Any unnatural turbidity, color, oil film, odor, floating solids, foams, settleable solids, suspended solids, deposits, etc. shall be reported concurrently with the quarterly discharge monitoring reports. Documentation of the outfall observances shall be maintained at the facility.

B.CO.20. **Agricultural Stormwater Exemption:** There shall be no discharge of manure or process wastewater as a result of the application of manure or process wastewater to land application areas under the control of the Permittee, except where the discharge is an agricultural stormwater discharge. Where manure and/or process wastewater have/has been applied in accordance with the Division approved NMP, a precipitation related discharge of manure and/or process wastewater from land under the control of the Permittee is considered to be an agricultural stormwater discharge.

B.CO.21. **Tile Drains:** Manure and/or process wastewater shall not be applied to agricultural fields containing tile drains or other type(s) of subsurface drainage, unless the recovery and handling of this water is described in the approved NMP.

B.CO.22. **Manure Storage Requirements:** Manure shall be stored in a way that minimizes pollution to any waterway and to minimize dust and other particulate matter during storm event or high wind events. Manure Storage procedures must ensure proper operation and maintenance of the storage facility.

B.CO.23. **Manure, Compost, and Soil Sampling:** Manure, compost, and process wastewater shall be analyzed, in accordance with permit conditions, for nitrogen and phosphorus content. Soil shall be analyzed for nitrogen and phosphorus at the frequency specified in Section A. The results of these analyses shall be used in determining application rates for manure, compost, and process wastewater.

B.CO.24. **Manure and Compost Transfer Requirements:** If the manure, compost, or process wastewater is sold, given away, or otherwise transferred to another party, the Permittee shall comply with the following conditions:

B.CO.24.1. Maintain records showing the date and amount of manure, compost, and/or process wastewater that leaves the permitted facility;

B.CO.24.2. Record the name and address of the recipient;

B.CO.24.3. Provide the recipient(s) with representative information that includes the most recent analysis of the nutrient content of the manure, compost, and/or process wastewater; and

B.CO.24.4. Manure transfer records shall be retained on-site for a period of at least five years. The Permittee shall maintain the same records for any manure or process wastewater transferred to its facility for composting or land application. The Permittee shall only accept transferred manure and/or process wastewater from permitted concentrated animal feeding operations. All accepted nutrients shall be included in the facility's NMP prior to land application.

B.CO.25. **Animal Mortality Management Plan:** The Permittee shall implement the Division-approved Animal Mortality Management Plan (AMMP) to ensure proper disposal of dead animals and prevent the discharge of pollutants to Waters of the State. Animal carcasses shall not be disposed of in storage or treatment facilities unless the facility is designed specifically to treat the carcasses.

B.CO.26. **Facility Ownership:** Two or more animal feeding operations under common ownership or management shall be considered a single animal feeding operation if the facilities adjoin each other or if the facilities use a common area or system for disposal of wastes.

B.CO.27. **Inspections:** Inspection records shall be retained on-site for a period of at least five years, and be readily available to the Division or its representative upon request.

B.CO.28. **Inspection Frequency:** The Permittee shall conduct the following inspections and monitoring activities at the designated frequencies:

B.CO.28.1. **Daily:** The Permittee shall perform daily visual inspections of all water lines, including drinking water or cooling water lines, when present, for leakage or deterioration.

B.CO.28.2. **Weekly:** The Permittee shall inspect all stormwater diversion devices, run-on/runoff diversion structures, and devices channeling contaminated stormwater to the wastewater and manure storage and containment structure(s).

B.CO.28.3. **Weekly:** The Permittee shall inspect all waste storage and treatment facilities to identify and abate breached containment conditions. The inspection will note the level in the liquid impoundments as indicated by staff gauge or other method of indicating the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.

B.CO.28.4. **Monthly:** The Permittee shall inspect all equipment used for land application of manure or process wastewater for leaks.

B.CO.28.5. Any deficiencies identified as a result of these inspections shall be corrected as soon as possible.

B.CO.29. **Freeboard:** A minimum of two (2) feet of freeboard, as indicated by a staff gauge or other method of indicating the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event, shall be maintained in the ponds/impoundments at all times. Ponds/impoundments shall be cleaned as needed, and maintained on a regular basis to maintain storage capacity and freeboard requirements.

B.CO.30. **Construction Integrity:** Any and all liners shall remain free of leaks and defects.

B.CO.31. **Production Area Recordkeeping:** The Permittee shall maintain the following information on-site:

B.CO.31.1. Records documenting the inspections required by the Inspection and Monitoring requirements listed above;

B.CO.31.2. Records documenting any actions taken to correct deficiencies identified during the inspections and monitoring required by the Inspection and Monitoring requirements listed above; and

B.CO.31.3. Records of mortalities management and practices used by the Permittee to comply with the AMMP.

B.CO.32. **Land Application Area Recordkeeping:** The Permittee shall maintain the following information on-site:

B.CO.32.1. Weather conditions at the time of land application and for twenty-four (24) hours prior to and following application;

B.CO.32.2. Date(s) of manure application equipment inspection and calibration;

B.CO.32.3. The expected crop yields;

B.CO.32.4. The date(s) manure, litter or process wastewater is applied to each field;

B.CO.32.5. Test methods used to sample and analyze manure, litter, and process wastewater, and soil;

B.CO.32.6. Results from the manure, litter, and process wastewater, and soil sampling;

B.CO.32.7. Explanation of the basis for determining manure application rates, as provided in the technical standards established by the Division;

B.CO.32.8. Total amount of nitrogen and phosphorus applied to each field, including documentation of calculations for the total amount applied;

B.CO.32.9. The method used to apply the manure, litter, or process wastewater.

B.CO.33. **Security:** Ponds and land application areas shall be fenced and posted with signs that clearly state the storage and application of process water and to avoid contact.

B.CO.34. **Waste Facility Cover:** If the Permittee constructs a cover for a waste treatment or storage facility, the cover shall be designed and constructed in accordance with NRCS Conservation Practice Standard Code 367, Waste Facility Cover , September 2003 or more recent.

B.CO.35. **Best Management Practices:** The Permittee shall implement Best Management Practices (BMPs) at the facility in any and all forms required or necessary to protect waters of the State.

B.CO.36. **Remediation Activities:** All groundwater and/or soil contamination issues shall be addressed in accordance with the requirements of the Division.

B.CO.37. **Closure Activities:** Lagoons, ponds, surface impoundments, and other manure or process wastewater storage facilities shall be maintained at all times until closed in accordance with the requirements of the Division. For all process components that are permanently closed the Permittee shall submit to the Division, for review and approval, a closure plan. All process components must be

properly closed in accordance with an approved closure plan if the Permittee ceases operation.

B.CO.38. **Permit Cancellation:** To terminate permit coverage, a permit cancellation request, Facility Closure Plan, and Schedule shall be submitted to the Division in writing for review and approval. The Facility Closure Plan and Schedule shall address the following, at a minimum:

B.CO.38.1. Post-closure groundwater monitoring and remediation;

B.CO.38.2. Component stabilization (both chemical and physical);

B.CO.38.3. A Schedule specific to closure activities and facility abandonment procedures;

B.CO.38.4. A strategy for abatement of nutrients at the facility;

B.CO.38.5. **Final Closure Report:** The Final Closure Report shall be submitted for review and approval prior to Permit termination and shall contain the following, at a minimum:

B.CO.38.5.1. A Summary of all completed closure-related activities;

B.CO.38.5.2. A Summary of post-closure groundwater monitoring and remediation, as applicable; and

B.CO.38.5.3. Submittal of closure related as-builts.

B.CO.39. **Annual CAFO Reporting Requirements:** In addition to the Annual Report Requirements in Part A.3.1, the Permittee must also submit the following annual report requirements to the Division:

B.CO.39.1. The number and type of animals, whether in open confinement or housed under roof;

B.CO.39.2. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

B.CO.39.3. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

B.CO.39.4. Total number of acres for land application covered by the Division approved nutrient management plan;

B.CO.39.5. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

B.CO.39.6. Summary of all manure, litter and process wastewater discharges from the production areas that have occurred in the previous 12 months, including date, time and approximate volume;

B.CO.39.7. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

B.CO.39.8. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter and process wastewater, the results of land application rate calculations, and amount of manure, litter and process wastewater applied to each field during the previous 12 months.

B.NMP. Nutrient Management Plan:

B.NMP.1. The facility shall be operated in accordance with a Division approved Nutrient Management Plan (NMP). The NMP shall be prepared in accordance with Natural Resource Conservation Service (NRCS) Conservation Practice Standard Code 590 Nutrient Management, June 2002 or more recent, and NRCS Conservation Practice Standard Code 633 Waste Utilization, October 2003 or more recent, and with the requirements of this section.

B.NMP.2. The NMP shall contain provisions that:

B.NMP.2.1. Ensure adequate storage and handling of manure and process wastewater including procedures to ensure proper operation and maintenance of the storage facilities;

B.NMP.2.2. Ensure that stormwater or other water run-on is diverted from the production area;

B.NMP.2.3. Prevent direct contact of confined animals with any water of the State;

B.NMP.2.4. Ensure that chemicals and other contaminants handled at the facility are not disposed in any manure, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

B.NMP.2.5. Identify site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices to control runoff to waters of the State;

B.NMP.2.6. Identify protocols for appropriate testing of manure, process wastewater, and soil;

B.NMP.2.7. Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater;

B.NMP.2.8. Identify specific records that shall be maintained to document the implementation and management of the minimum elements described in the NMP and this part; and

B.NMP.2.9. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities.

B.NMP.3. The NMP shall be signed by the Permittee.

B.NMP.4. A Permittee shall provide to the Division the most current version of the NMP and identify the changes from the previous version, including but not limited to, the location, method, timing or frequency of land application so that the NMP reflects the current operational characteristics and practices of the facility. A review of these changes by the Division may require a major modification of the permit.

B.NMP.5. **Crop Rotation:** The Crop Rotation Table summarizes the Permittee's proposed crops for the five-year term of the permit:

B.NMP.6. **Nitrogen Application:** Nitrogen shall be applied in accordance with the Division approved NMP.

SECTION C

C.1. Definitions

C.1.1. **CWA** means the Clean Water Act (formerly referred to as either the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 96-217, Public Law 96- 576, Public Law 97-117, and Public Law 100-4.

C.1.2. **Waters of the State** means all waters situated wholly or partly within or bordering upon this state including but not limited to all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems, and drainage systems; and all bodies or accumulations of water, surface and underground, natural or artificial.

C.1.3. **30-day average discharge** means the total discharge during a month divided by the number of samples in the period for that discharge facility. Where less than daily sampling is required by this permit, the 30-day average discharge shall be determined by the summation of all the measured discharges divided by the number of samples during the period when the measurements were made.

C.1.4. **7-day average concentration** means the arithmetic mean of measurements made during a week. If there is more than one measurement per day, the measurements may be averaged in accordance with Section A (Monitoring: Additional Monitoring by Permittee).

C.1.5. **Daily maximum** means the highest measurement during the monitoring period.

C.1.6. **30-day average concentration** , other than for fecal coliform bacteria, means the arithmetic mean of measurements made during a month. If there is more than one measurement per day, the measurements may be averaged in accordance with Section A (Monitoring: Additional Monitoring by Permittee). The "30-day average concentration" for fecal coliform bacteria means the geometric mean of measurements made during a month. The geometric mean is the "nth" root of the product of "n" numbers. Geometric mean calculations where there are non-detect results for fecal coliform shall use one half the detection limit as the value for the non-detect results.

C.1.7. **mg/L** means milligrams per liter.

C.1.8. **gpd** means gallons per day.

C.1.9. **MG** means million gallons.

C.1.10. **MGD** means million gallons per day.

C.1.11. **Mgal/d** means million gallons per day.

C.1.12. **"-N"** means measured as nitrogen.

C.1.13. **"–P"** means measured as phosphorus.

C.1.14. **mg/kg** means milligrams per kilogram.

C.1.15. **DWB** means Dry Weight Basis.

C.1.16. **CFU** means Colony Forming Unit.

C.1.17. **MPN** means Most Probable Number.

C.1.18. **mL** means milliliter.

C.1.19. **NMP** means Nutrient Management Plan.

C.1.20. **AC** means acre.

C.1.21. **lbs/A** means pounds per acre.

C.1.22. **lbs/day** means pounds per day.

C.1.23. **TDS** means total dissolved solids.

C.1.24. **Cfs** means cubic feet per second.

C.1.25. **CP** means center pivot.

C.1.26. **S** means summer.

C.1.27. **W** means winter.

C.1.28. **Discrete sample** means any individual sample collected in less than 15 minutes.

C.1.29. **For flow-rate measurements a "composite"** sample means the arithmetic mean of no fewer than six individual measurements taken at equal time intervals for 24 hours, or for the duration of discharge, whichever is shorter.

C.1.30. **For other than flow-rate a "composite"** sample means a combination of no fewer than six individual flow-weighted samples obtained at equal time intervals for 24 hours, or for the duration of discharge, whichever is shorter. Flow-weighted sample means that the volume of each individual sample shall be proportional to the discharge flow rate at the time of sampling.

C.1.31. **Acute Toxicity** is defined in the whole effluent testing procedures presented in this permit Section A (Whole Effluent Toxicity Testing).

C.1.32. **Biosolids** are non-hazardous sewage sludge or domestic septage as defined in 40 CFR 503.9.

C.1.33. **A "bypass"** means the intentional diversion of waste streams from any portion of a treatment facility.

C.1.34. **An "upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

C.1.35. **Sewage sludge** means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in a treatment works.

C.1.36. **Agricultural land** means land on which a food crop, a feed crop, or a fiber crop is grown. This includes rangeland and land used as pasture.

C.1.37. **Agronomic rate** means the whole sludge application rate (dry weight basis) designed:

C.1.37.1. To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

C.1.37.2. To minimize the amount of nitrogen that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

C.1.38. **Manure** means animal excrement and is defined to include bedding, compost, and raw materials or other materials commingled with animal excrement or set aside for disposal.

C.1.39. **Production area** means the portion of the facility that is not used for land application and includes all areas used for animal product production activities. This includes but is not limited to the animal confinement areas, the manure storage areas, the raw materials storage areas, and the waste containment areas.

C.1.40. **Process wastewater** means water directly or indirectly used in the operation of the facility for any of the following:

C.1.40.1. Spillage or overflow from animal watering systems;

C.1.40.2. Washing, cleaning, or flushing pens, barns, manure pits, or other process components;

C.1.40.3. Direct contact swimming, washing, or spray cooling of animals;

C.1.40.4. Dust control, not including uncontaminated groundwater used outside of the production area; and

C.1.40.5. Any water which comes into contact with, or is a constituent of, any raw materials, products, or byproducts including manure, feed, milk, eggs or bedding.

C.1.41. **Land application** means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

C.1.42. **Land application area** means land under the control of the Permittee, whether it is owned, rented, or leased, to which manure or process wastewater from the production area is or may be applied.

C.1.43. **25-year, 24-hour storm event** means a precipitation event with a probable recurrence interval of once in twenty-five years, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source.

C.1.44. **100-year, 24-hour storm event** means a precipitation event with a probable recurrence interval of once in one hundred years, as defined by the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States," May, 1961, or equivalent regional or State rainfall probability information developed from this source.

C.1.45. **Chronic precipitation event** means a series of wet weather conditions that precludes reducing the volume of properly designed, constructed, operated, and maintained waste storage and/or treatment facilities and that total a volume in excess of the 25-year, 24-hour storm event.

C.1.46. **Vegetated buffer** means a permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants leaving the field and reaching surface waters.

C.1.47. **Feed crops** means crops produced primarily for consumption by animals.

C.1.48. **Food crops** means crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

C.2. **Operations and Maintenance (O&M) manual:**

C.2.1. Pursuant to Section A, the O&M manual shall be prepared and submitted to NDEP for review in accordance with the Division's Operations and Maintenance Manual guidance (WTS-2). http://ndep.nv.gov/bwpc/wts-2.pdf

C.2.2. The operator shall inspect the site at the frequency prescribed in the O&M Manual.

C.2.3. The Permittee shall maintain an operations logbook (hardcopy or electronic) on-site as referenced in the O&M manual.

C.2.4. The logbook shall include the name of the operator, date, time, and general condition of the facility.

C.3. **Planned changes:** The Permittee shall give notice to the Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition to a permitted facility:

C.3.1. May meet one of the criteria for determining whether a facility is a new source (40 CFR 122.29 (b));

C.3.2. Could significantly change the nature or increase the quantity of pollutants discharged; or

C.3.3. Results in a significant change to the Permittee's sludge management practice or disposal sites.

C.4. **Anticipated non-compliance:** The Permittee shall give advance notice to the Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

C.5. **Change in Discharge:** All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit. Any anticipated facility expansions or treatment modifications which will result in new, different, or increased discharges of pollutants must be reported by submission of a new application or, if such changes will not violate the effluent limitations specified in this permit, by notice to the permit issuing authority of such changes. Any changes to the permitted treatment facility must comply with Nevada Administrative Code (NAC) 445A.The permit may be modified to specify and limit any pollutants not previously limited.

C.6. **Facilities Operation-Proper Operation and Maintenance:** The Permittee shall at all times maintain in good working order and properly operate all treatment and control facilities, collection systems, and pump stations installed or used by the Permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures.

C.7. **Adverse Impact-Duty to Mitigate:** The Permittee shall take all reasonable steps to minimize releases to the environment resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the non-complying discharge. The Permittee shall carry out such measures, as reasonable, to prevent significant adverse impacts on human health or the environment. If the monitoring program (as required by this permit) identifies exceedances of ambient water quality standards at the boundary of the mixing zone, the Permittee shall notify the Division of the exceedances and describe any mitigation measures being implemented as part of the quarterly monitoring report requirements.

C.8. Noncompliance, Unauthorized Discharge, Bypass and Upset

C.8.1. Any diversion, bypass, spill, overflow or discharge of treated or untreated wastewater from wastewater treatment or conveyance facilities under the control of the Permittee to navigable waters is prohibited except as authorized by this permit or in accordance with the Division's Spill Reporting Policy. The Division may take enforcement action for a diversion, bypass, spill, overflow, or discharge of treated or untreated wastewater to waters of the state except as authorized by this permit or in accordance with the Division's Spill Reporting Policy. In the event the Permittee has knowledge that a diversion, bypass, spill, overflow or discharge not authorized by this permit or in accordance with the Division's Spill Reporting Policy is probable, the Permittee shall notify the Administrator immediately.

C.8.2. The Permittee shall notify the Administrator within twenty-four (24) hours of any diversion, bypass, spill, upset, overflow or release of treated or untreated discharge from wastewater treatment or conveyance facilities under the control of the Permittee other than that which is authorized by the permit or in accordance with the Division's Spill Reporting Policy. A written report shall be submitted to the Administrator within five (5) days of diversion, bypass, spill, overflow, upset or discharge, detailing the entire incident including:

C.8.2.1. Time and date of discharge;

C.8.2.2. Exact location and estimated amount of discharge;

C.8.2.3. Flow path and any bodies of water which the discharge reached;

C.8.2.4. The specific cause of the discharge; and

C.8.2.5. The preventive and/or corrective actions taken.

C.8.3. The following shall be included as information which must be reported within 24 hours:

C.8.3.1. Any unanticipated bypass which exceeds any effluent limitation in the permit;

C.8.3.2. Any upset which exceeds any effluent limitation in the permit; and

C.8.3.3. Violation of a limitation for any toxic pollutant or any pollutant identified as the method to control a toxic pollutant.

C.8.4. The Permittee shall report all instances of noncompliance not reported under Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset) at the time monitoring reports are submitted. The reports shall contain the information listed in Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset).

C.8.5. **Bypass not exceeding limitations:** The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of the applicable section of Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset including Prohibition of Bypass).

C.8.6. **Anticipated bypass:** If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of bypass.

C.8.7. **Prohibition of Bypass:** Bypass is prohibited, and the Administrator may take enforcement action against a Permittee for bypass, unless:

C.8.7.1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

C.8.7.2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

C.8.7.3. The Permittee submitted notices as required under Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset).

C.9. The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that it will meet the three conditions listed in Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset: Prohibition of Bypass).

C.10. **Effect of an upset:** An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset: Conditions necessary for a demonstration of an upset) are met.

C.11. **Conditions necessary for a demonstration of an upset:** A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:

C.11.1. An upset occurred and that the Permittee can identify the cause(s) of the upset;

C.11.2. The permitted facility was at the time being properly operated;

C.11.3. The Permittee submitted notice of the upset as required under this section; and

C.11.4. The Permittee complied with any remedial measures required under Section C (Noncompliance, Unauthorized Discharge, Bypassing and Upset).

C.12. In selecting the appropriate enforcement option, the Administrator shall consider whether or not the noncompliance was the result of an upset. The burden of proof is on the Permittee to establish that an upset occurred.

C.13. All solid waste screening and sewage sludge shall be disposed of or reused in a manner approved by the Division and the County. Facilities that generate and dispose of sewage sludge, or prepare it for reuse, shall monitor the concentrations of arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc and report in mg/dry kg of sludge as outlined below. A monitoring report which includes the analytical data, volume disposed of, facility name, address, phone number and contact where sludge was disposed or reused shall be submitted with the quarterly Discharge Monitoring Report (DMR). Facilities which sample annually shall submit the information annually with the 4th quarter DMR.

Dry Biosolids Disposal rate in metric tons/yr.	**Frequency**
>0 - <290	each year
≥290 -<1500	once a quarter
≥1500 -<15000	once every 2 months
≥15000	once a month

C.14. **Removed Substances:** Solids, sludges, filter backwash, or other pollutants removed in the course of

treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollution from such materials from entering any navigable waters.

C.15. **Safeguards to Electric Power Failure:** In order to maintain compliance with the effluent limitations and prohibitions of this permit the Permittee shall either:

C.15.1. Provide at the time of discharge an alternative power source sufficient to operate the wastewater control facilities; or

C.15.2. Halt or reduce all discharges upon the reduction, loss, or failure of the primary source of power to the wastewater control facilities.

C.16. **Right of Entry and Inspection:** The Permittee shall allow the Administrator and/or his authorized representatives, upon the presentation of credentials, to:

C.16.1. Enter at reasonable times upon the Permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;

C.16.2. Have access to and copy any records required to be kept under the terms and conditions of this permit at reasonable times;

C.16.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations required in this permit; and

C.16.4. Perform any necessary sampling or monitoring to determine compliance with this permit at any location for any parameter.

C.17. **Transfer of Ownership or Control:** In the event of any change in control or ownership of facilities from which the authorized discharge emanates, the Permittee shall notify the succeeding owner or controller of the existence of this permit, by letter, a copy of which shall be forwarded to the Administrator. The Administrator may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary. The Administrator shall approve ALL transfers of permits.

C.18. **Availability of Reports:** Except for data determined to be confidential under Nevada Revised Statute (NRS) 445A.665, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Administrator. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NRS 445A.710.

C.19. **Furnishing False Information and Tampering with Monitoring Devices:** Any person who intentionally or with criminal negligence makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained by the provisions of NRS 445A.300 to 445A.730, inclusive, or by any permit, rule, regulation or order issued pursuant thereto, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under the provisions of NRS 445A.300 to 445A.730, inclusive, or by any permit, rule, regulation or order issued pursuant thereto, is guilty of a gross misdemeanor and shall be punished by a fine of not more than $10,000 or by imprisonment. This penalty is in addition to any other penalties, civil or criminal, provided pursuant to NRS 445A.300 to 445A.730, inclusive.

C.20. **Penalty for Violation of Permit Conditions:** NRS 445A.675 provides that any person who violates a permit condition is subject to administrative and judicial sanctions as outlined in NRS 445A.690 through 445A.705.

C.21. **Permit Modification, Suspension or Revocation:** After notice and opportunity for a hearing, this permit

may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

C.21.1. Violation of any terms or conditions of this permit;

C.21.2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

C.21.3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;

C.21.4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

C.21.5. Material and substantial alterations or additions to the permitted facility or activity;

C.21.6. The Administrator has received new information;

C.21.7. The standards or regulations have changed; or

C.21.8. The Administrator has received notification that the permit will be transferred.

C.22. **Minor Modifications:** With the consent of the Permittee and without public notice, the Administrator may make minor modifications in a permit to:

C.22.1. Correct typographical errors;

C.22.2. Clarify permit language;

C.22.3. Require more frequent monitoring or reporting;

C.22.4. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the permit and does not interfere with attainment of the final compliance date;

C.22.5. Allow for change in ownership;

C.22.6. Change the construction schedule for a new discharger provided that all equipment is installed and operational prior to discharge;

C.22.7. Delete an outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

C.22.8. Reallocate the IWLA as long as the ΣIWLA does not change.

C.23. **Toxic Pollutants:** Notwithstanding Section C (Permit Modification, Suspension or Revocation), if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the Permittee so notified.

C.24. **Liability:** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable Federal, State or local laws, regulations, or ordinances. However, except for any toxic effluent standards and prohibitions imposed under section 307 of the Clean Water Act or toxic water quality standards set

forth in NAC 445A.144, compliance with this permit constitutes compliance with Clean Water Act sections 301, 302, 306, 307, 318, 403, 405(a) and (b), and with NRS 445A.300 through 445A.730.

C.25. **Property Rights:** The issuance of this permit does not convey any property rights, in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

C.26. **Severability:** The provisions of this permit are severable, and if any provision of this permit, or the application of any provisions of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

C.27. **Duty to Comply:** The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; permit termination; revocation and reissuance, or modification; or denial of a permit renewal application.

C.28. **Need to Halt or Reduce Activity Not a Defense:** It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

C.29. **Duty to Provide Information:** The Permittee shall furnish to the Administrator, within a reasonable time, any relevant information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this permit.

C.30. **Reapplication:** If the Permittee desires to continue to discharge, he shall reapply not later than 180 days before this permit expires on the application forms then in use. The Permittee shall submit the sludge information listed in 40 CFR 501.15(a)(2) with the renewal application. The renewal application shall be accompanied by the fee required by NAC 445A.232.

C.31. **Signatures, Certification Required on Application and Reporting Forms:** All applications, reports, or information submitted to the Administrator shall be signed and certified by making the following certification. "I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C.31.1. All applications, reports or other information submitted to the Administrator shall be signed by one of the following:

C.31.1.1. A principal executive officer of the corporation (of at least the level of vice president) or his authorized representative who is responsible for the overall operation of the facility from which the discharge described in the application or reporting form originates;

C.31.1.2. A general partner of the partnership;

C.31.1.3. The proprietor of the sole proprietorship; or

C.31.1.4 A principal executive officer, ranking elected official or other authorized employee of the municipal, state or other public facility.

C.32. **Changes to Authorization:** If an authorization under Section C.31 (Signatures, Certification Required on

Application and Reporting Forms) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section C.31 (Signatures, Certification Required on Application and Reporting Forms) must be submitted to the Administrator prior to or together with any reports, information, or applications to be signed by an authorized representative.

C.33. **Holding Pond Conditions:** If any wastewater from the Permittee's facilities is placed in ponds owned or operated by the Permittee, such ponds shall be located and constructed so as to:

C.33.1. Contain with no discharge the once-in-the twenty-five year, 24-hour storm at said location;

C.33.2. Withstand with no discharge the once-in-one-hundred year flood of said location; and

C.33.3. Prevent escape of wastewater by leakage other than as authorized by this permit, unless otherwise approved by the Division.

C.34. **Publicly Owned Treatment Works** [40 CFR 122.42(b)]: All POTWs must provide adequate notice to the Administrator of the following:

C.34.1. Any new introduction of pollutants into the Permittee's facilities from an indirect discharger which would be subject to section 301 or 306 of the Act if it were directly discharging those pollutants;

C.34.2. Any substantial change in the volume or character of pollutants being introduced into the Permittee's facilities by a source introducing pollutants into the Permittee's facilities at the time of issuance of the permit.;

C.34.3. For the purposes of this part, adequate notice shall include information on: (1) the quality and quantity of effluent introduced into the Permittee's facilities and (2) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the Permittee's facilities.

C.35. **Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers** [40 CFR 122.42(a)]: In addition to the reporting requirements under 40 CFR 122.41(l), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Administrator as soon as they know or have reason to believe:

C.35.1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

C.35.1.1. One hundred micrograms per liter (100 µg/l);

C.35.1.2. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

C.35.1.3. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

C.35.1.4. The level established by the Administrator in accordance with 40 CFR 122.44(f).

C.35.2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

C.35.2.1. Five hundred micrograms per liter (500 µg/l);

C.35.2.2. One milligram per liter (1 mg/l) for antimony;

C.35.2.3. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

C.35.2.4. The level established by the Administrator in accordance with 40 CFR 122.44(f).

EXHIBIT 3

EXHIBIT 3

ndep
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
protecting the future for generations

STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

February 18, 2015

Certified Mail # 9171 9690 0935 0012 2550 82
Return Receipt Requested

Mr. Dirk Vlot, Owner
Smith Valley Dairy
P.O. Box 497
Wellington, Nevada 89444

Re: Formal Enforcement #NOV021815W1 – Smith Valley Dairy

Dear Mr. Vlot:

The enclosed Finding of Alleged Violation and Order issued by the Administrator of the Nevada Division of Environmental Protection (NDEP), pursuant to Nevada Revised Statutes (NRS) 445A.675 and 445A.690, requires compliance with the terms and conditions of the Order. Any violation of the enclosed Order could subject Smith Valley Dairy to an action for relief pursuant to NRS 445A.695, NRS 445A.700 and NRS 445A.705.

The Finding of Alleged Violation and Order were developed as a result of an unauthorized construction of wastewater ponds and associated appurtenance.

Pursuant to NRS 445A.690, the enclosed Finding of Alleged Violation and Order is final and not subject to review unless, within thirty (30) days after the date the Order is served, a request by written petition for a hearing (Form #3, attached) is received by the State Environmental Commission. Send required documents to: Mrs. Val King, 901 S. Stewart St., Suite 4001, Carson City, NV 89701, or by telefax at (775) 687-5856. Please provide us with a copy of any correspondence which you have with the State Environmental Commission concerning this matter.

Finally, if you have any questions on this matter, please contact me at (775) 687-9435.

Sincerely,

Joseph Maez, P.E., Supervisor
Compliance Branch
Bureau of Water Pollution Control

Enclosures: Finding of Alleged Violation
Order
SEC Form # 3

Electronic cc: Colleen Cripps, Ph.D., Administrator, NDEP
Dave Gaskin, P.E., Deputy Administrator NDEP Administrator
Alan Tinney, P.E., Bureau Chief, BWPC
Katrina Pascual, E.I., NDEP
Mickie Reid, NDEP

Cc: Tom Haren, CEO, AGPROfessionals, 3050 67th Avenue,
Greeley, CO 80634

IN THE MATTER OF)
SMITH VALLEY DAIRY)

FINDING OF ALLEGED VIOLATION

I. This Finding is made on the basis of the following facts:

A. Relevant Statutory & Regulatory Authority

1. The State of Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP), under the authority of Nevada Revised Statutes (NRS) 445A.445 subsection 1, has the power and duty to administer and enforce the provisions of NRS 445A.300 to 445A.730, inclusive, and all rules, regulations and standards promulgated by the Commission and all Orders and permits promulgated by the Department.

2. NRS 445A.585 - Permit required for construction of treatment works. A person shall not begin the construction of any treatment works without a permit issued by the Department.

3. NRS 445A.410 "Treatment works" defined. "Treatment works" means:

   i. Any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances;

   ii. Extensions, improvements, remodeling, additions, and alterations of any device or system mentioned in subsection 1;

   iii. Units essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities;

   iv. Any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; and

   v. Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

4. NAC445A.283 Permit required to construct, install, expand or modify treatment works. (NRS 445A.425, 445A.585) No person without first obtaining a permit from the Department may:

i. Construct, install, expand or significantly modify any factory, mill, plant or other industrial or commercial facility which will result in a discharge not authorized by an existing permit to waters of the State.

ii. Add extensions to existing municipal or privately owned sewer systems or provide new sewer service to existing or newly constructed buildings which could cause the raw sewage influent to the treatment plant to exceed the limits prescribed by the permit issued in accordance with NAC 445A.228 to 445A.263, inclusive.

iii. Construct, install or significantly modify any facilities designed or used for treatment or discharge of pollutants.

B. Injunctive Relief and Penalties

1. Pursuant to NRS 445A.695, the NDEP may apply to the district court to enjoin the continuance or occurrence of any act or practice which violates the provisions of NRS 445A.300 to 445A.730, inclusive, or of any regulation adopted or order issued pursuant thereto.

2. Pursuant to NRS 445A.700, a person who violates any provision of NRS 445A.300 to 445A.730 inclusive, shall pay a civil penalty of not more than $25,000 for each day of the violation.

C. Factual Allegations:

The Smith Valley Dairy will hereby be referred to as "The Responsible Party."

1. On March 18, 2014, NDEP received a question via email from AGPROfessionals regarding construction start-up on the Smith Valley Dairy ponds. In this email question, NDEP was asked "Do we need to wait for it (the permit) to be publically noticed as well prior to initiating construction?" In response to the question , NDEP informed the Responsible Party via email dated March 19, 2014 that "construction may not be initiated until there is a permit in place."

2. On December 29, 2014, NDEP conducted an inspection at the site and noted that two lined ponds had been constructed for this facility. These ponds matched final design plans that were submitted to NDEP as a part of the Discharge Permit application.

3. On December 31, 2014, the Responsible Party was issued a Cease and Desist Action by NDEP to stop any and all construction on the dairy wastewater ponds and associated discharge structures at this location.

4. On January 16, 2015, a meeting was held at NDEP with the Responsible Party to discuss the Cease and Desist Action and to verify the details on the unauthorized construction of the ponds and the associated discharge structures.

5. On January 30, 2015, the Responsible Party issued a letter in response to the Cease and Desist Action. In this letter, they stated that the ponds and related structures were constructed in general accordance with the plans and specifications submitted to NDEP. Additionally, the Responsible Party stated they would cease construction of the ponds and the associated discharge structures.

II. Finding of Alleged Violations: Pursuant to NRS 445A.700 and Sections II.A of this FOAV, the Responsible Party is subject to a penalty of not more than $25,000 per violation.

Based upon the foregoing statutory and regulatory authority and the factual allegations set forth herein, the NDEP finds and alleges as follows:

A. The Responsible Party failed to obtain a permit prior to the construction of two lined ponds and associated appurtenances in violation of NRS 445A.585 and NAC 445A.283

III. Conclusion

On the basis of the facts listed above and the alleged violations, the Administrator of the Division of Environmental Protection finds Smith Valley Dairy in alleged violation of NRS 445A.585 and NAC445A.283.

02/18/15
Date

Katrina A. Pascual, E.I.
Technical, Compliance and Enforcement Branch
Bureau of Water Pollution Control

IN THE MATTER OF)
SMITH VALLEY DAIRY)

Order No NV021815W1

ORDER

This Order is issued under the authority vested in the Director of the Department of Conservation and Natural Resources by Nevada Revised Statutes (NRS) 445A.445 and 445A.450, which has been delegated to the Division of Environmental Protection (NDEP), and is issued in accordance with the provisions of NRS 445A.660, 445A.675 and 445A.690.

On the basis of the Finding of Alleged Violation attached hereto and made a part of this Order, the Administrator of NDEP, pursuant to authority delegated to her by the Director, Department of Conservation and Natural Resources, has determined that Smith Valley Dairy is in alleged violation of NRS 445A.585 and NAC 445A.283.

IT IS HEREBY ORDERED:

That Smith Valley Dairy (SVD) completes the following acts by the date specified below:

1. By no later than March 10, 2015, please provide the economic benefit realized, if any, by commencing construction before having the appropriate permit in place to begin construction.

2. By no later than March 10, 2015, coordinate a meeting at the Division of Environmental Protection's Carson City office to show cause why NDEP should not seek civil penalties for the violations cited. Please contact Katrina Pascual at (775) 687-9431 to arrange this meeting.

This Order serves to replace the Cease and Desist Letter issued on December 31, 2014. Closure of that matter will be addressed via closure of this Order.

2/19/15
Date

Joseph L. Maez, II, P.E., Supervisor
Bureau of Water Pollution Control

EXHIBIT 4

EXHIBIT 4

NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION

STATE OF NEVADA
Department of Conservation & Natural Resources
Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

March 5, 2015

Mr. Dirk Vlot, Owner
Smith Valley Dairy
P.O. Box 497
Wellington, Nevada 89444

Re: Formal Enforcement#NOV021815W1 – Smith Valley Dairy

Dear Mr. Vlot:

The purpose of this letter is to close Formal Enforcement #NOV021815W1 ("Formal Enforcement") regarding the Smith Valley Dairy. As required by the Order, a Show Cause Hearing was held on March 5, 2015. As a result, NDEP has determined that because there was no environmental impact and the response to cease and desist construction until the permit is issued was satisfactory, NDEP will close the Formal Enforcement.

Sincerely,

Alan Tinney, P.E.
Chief, Bureau of Water Pollution Control
Division of Environmental Protection

Electronic cc: Colleen Cripps, Ph.D., Administrator, NDEP
Dave Gaskin, P.E., Deputy Administrator NDEP
Alan Tinney, P.E., Bureau Chief, BWPC
Joe Maez, Supervisor, BWPC
Katrina Pascual, BWPC
Michele Reid, BWPC

Cc: Tom Haren, CEO, AGPROfessionals, 3050 67th Avenue, Greeley, CO 80634

EXHIBIT 5

EXHIBIT 5

Smith Valley Dairy - Groundwater Discharge Permit NS2014502

- NDEP Counties
- Land Application Area
- Corrals, Milking Barn & Ponds

FEMA Flood Hazard Areas

Field Zone

- Zone A - no base flood elevation
- Zone AE - base flood elevation
- Zone AH - 1-3 ft flood depth
- Zone AO - alluvial fan flooding 1-3ft
- Zone D - undetermined but possible
- Zone X - minimal flood hazard

PWS wells

D_PWS_FED_TYPE_CD

- Community
- Non-community
- Non-transient non-community

Wellhead Protection Areas

Capture Zone

- 6-Month
- 1-Year
- 2-Year
- 5-Year
- 10-Year
- 15-Year
- 20-Year
- 25-Year
- >25-Year
- Sub-basin
- Watershed

Drinking Water Protection Areas

Buffer__ft_

- 150
- 1000
- 3000
- 8000

NDEP

EXHIBIT 6

EXHIBIT 6

Flood Zones

The purpose of this page is to define flood zones, a commonly used term in floodplain management.

Definition/Description

Flood hazard areas identified on the Flood Insurance Rate Map are identified as a Special Flood Hazard Area (SFHA). SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood. SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones V1-V30. Moderate flood hazard areas, labeled Zone B or Zone X (shaded) are also shown on the FIRM, and are the areas between the limits of the base flood and the 0.2-percent-annual-chance (or 500-year) flood. The areas of minimal flood hazard, which are the areas outside the SFHA and higher than the elevation of the 0.2-percent-annual-chance flood, are labeled Zone C or Zone X (unshaded).

Guidance

- IS-9 Managing Floodplain Development Through The National Flood Insurance Program (NFIP) (Page 3-33)

Related Keywords

- Special Flood Hazard Area (SFHA)
- Zone A
- Zone AE and A1-30
- Zone AH
- Zone AO
- Zone AR
- Zone A99

EXHIBIT 7

EXHIBIT 7

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER POLLUTION CONTROL
Carson City Office
901 S. Stewart St., Suite 4001
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WTS – 37 (Revised: September 2011)

GUIDANCE DOCUMENT FOR THE DESIGN OF A LINED WASTEWATER HOLDING POND (SURFACE IMPOUNDMENT)

Information from the items listed below shall be presented as a minimum in an application prepared by a Nevada Registered Professional Engineer (P.E.) for a lined holding pond (surface impoundment) that contains wastewater regulated and permitted by the Bureau of Water Pollution Control (BWPC). Surface impoundments storing and/or treating wastewater require a discharge permit to be issued from BWPC prior to commencement of construction and operation.

BWPC does not permit the storage of any wastewater that is classified as a hazardous waste.

Also, please note that the Nevada Division of Water Resources (NDWR), Phone: (775) 684-2800, must approve any basin with a depth greater than 20 feet or a storage capacity of more than 20 acre-feet (AF).

This document is solely intended as guidance to the regulated community. It shall not replace best professional engineering judgment in the design of a wastewater holding pond or the regulations on dam safety from the DWR.

KEY WORDS:

NAC: Nevada Administrative Code
ASTM: American Society for Testing and Materials
GSI: Geosynthetic Institute
LCRS: Leak Collection and Recovery Systems

TABLE OF CONTENTS:

1. SITE CHARACTERIZATION
2. GENERAL POND DESIGN ITEMS
3. GEOMEMBRANE LINED PONDS
4. LEAK DETECTION SYSTEM DESIGN ITEMS

1. SITE CHARACTERIZATION DATA REQUIRED

A. A topographical map of the site with 5-foot contour intervals. On this map, please provide identification of the following within a one mile radius of the proposed pond:

1) Creeks and Rivers;
2) Dwelling units (e.g., residences and commercial buildings);
3) Earthquake fault lines;
4) Drinking water wells;
5) Wellhead Protection Zone Area delineation (if available).

B. The depth to the groundwater table shall be provided along with a description of the underlying strata (confining layers, soil types, etc.). The groundwater gradient and direction, depth to groundwater, and groundwater quality shall be provided.

If this information is not available from available data, the applicant may have to drill borings to the water table and have the strata categorized by a licensed professional with expertise in this discipline.

C. Watershed map of the site which depicts the 100-year flood plain and storm water drainage channels in and around the proposed pond(s) site.

D. Direction of prevailing winds shall be provided.

2. GENERAL POND CONSTRUCTION DETAILS

A. Interior embankments shall be sloped no steeper than 3:1 (horizontal to vertical).

B. Pond bottom shall be level unless a leak detection system is proposed using a leak collection media.

C. Top of the embankment shall be a minimum of 8 feet wide for non-vehicular access. If the top of the embankment is used as a service road, the top embankment width must be at least 12 feet and designed to support the load weight for all service vehicles.

D. Pond geometry should be either square or rectangular. If rectangular, the side lengths shall be no longer than 3 times the side width. Other pond geometry will be reviewed on a case by case basis.

E. A freeboard of 3-feet is required for all large ponds (greater than 1 acre of surface area). A freeboard of 2-feet may be acceptable for smaller ponds (1 acre or less of surface area) if it can be determined that wave action will not be a problem based upon a wave fetch analysis using local wind (meteorological) data.

F. The pond must withstand and contain, without release, the 25-year, 24-hour storm event.

G. Plans for protection from floodwater must be presented. The pond must be designed to

withstand the run-off generated by the 24-hour storm event with a 100-year recurrence interval. The pond should remain operational after such an event, with no structural damage.

H. The engineer shall attempt to not locate any ponds within the 100-year flood plain (NAC 445A.285).

I. A method for recording the liquid level in each pond shall be provided. This may include staff gages, sidewall depth markings, or pressure-depth sensors. If using staff gages, then the length intervals shall be marked in units of a quarter of a foot or inches and be easily readable from 30 feet away.

J. A plan for leak detection must be presented for all ponds. Examples of acceptable leak detection systems include double liner designs with leak collection sumps, and monitoring wells. Other innovative plans for leak detection will be reviewed by BWPC on a case by case basis.

K. A water balance demonstrating storage capacity of the pond within the required freeboard shall be presented. This balance shall incorporate local figures for pond surface evaporation and average precipitation rates.

L. Inlet piping must have an adequate erosion protection measure at the discharge point into the pond.

M. Seepage collars must be installed at junctions at piping penetrations to the pond embankment.

N. Ballast measures shall be considered to protect liner uplift from wind activity or high water table.

O. Odor control plans (if required). These may include providing aeration or recirculation of the flow to the pond(s) or other acceptable measures (chemical oxidants, algal control chemicals, scum removal, sludge removal, etc.).

P. The chemical compatibility of the liner material with the stored wastewater must be evaluated with the liner manufacturer and found suitable for the proposed wastewater.

Q. A plan for measuring the depth of solids (sludge) accumulation in the pond shall be provided (e.g., Sludge Judge™, ultrasonic sounder, etc.). Additionally, a plan for solids removal from the pond shall be presented that will be protective of the liner system.

R. The ponds shall be enclosed within an acceptable fence to keep out non-authorized personnel (e.g., the public), wildlife, and livestock. Waterfowl protection (e.g., bird balls, netting, etc.) may be also required by applicable state or federal wildlife agencies.

S. The perimeter fence shall be posted at the entrance gate and on all four sides at a recommended 300 ft. spacing interval per sign. The warning signs shall indicate usage of the pond(s) as a wastewater storage facility. The entrance gate sign shall denote the facility's name and emergency contact number.

T. A safety plan (emergency egress) for getting people out of the pond shall be presented (e.g. roped life rings, textured liner, sidewall ladders, service rowboat, etc.).

3. DESIGN ITEMS FOR GEOMEMBRANE LINER SYSTEMS

A. The liner should have a coefficient of permeability of at least 1 x 10^{-11} cm/sec and minimum thicknesses of 60-mil (primary liner) and 40-mil (secondary liner), respectively. The primary or upper liner is the liner layer in contact with the wastewater.

B. Reclaimed water ponds (e.g. golf courses, effluent storage reservoirs, etc.) storing denitrified domestic effluent (i.e. < 10 mg/l of Total Nitrogen content) may utilize a PVC liner with a minimal thickness of 30-mil provided that the PVC liner is protected from UV degradation (e.g., soil or sand cover, sprayed-on concrete, etc.).

C. The liner material specifications shall meet the standards listed in the Geosynthetic Research Institute Test Method GM13 (e.g. UV Resistance, Puncture Resistance).

D. A plan for protection of the liner from ice damage, temperature extremes, wind uplift, oxidation, and sharp objects shall be presented.

E. If there is the potential for gas generation in the sub-base, a plan to remove the gases beneath the liner must be presented.

F. Supporting geotechnical data on the embankment foundation and slope stability shall be submitted.

G. Subsurface or underlayment prep for the liner installation shall be provided.

H. It is strongly recommended that the primary liner material be textured on the exposed side for personnel slip prevention.

I. A means of emergency egress shall be provided (e.g. knotted hand lines, welded in ladder rungs, etc.).

J. Provide the details on liner anchoring and all pipe penetrations. It is recommended that liner penetrations be limited to the best extent possible and reserved to areas above the pond freeboard to reduce potential for leaks.

K. The engineer-of-record for the approved design shall submit a Quality Assurance/Quality Control (QA/QC) letter and report on the liner installation when complete. This documentation shall include a summary of the results of all field tests conducted on the liner.

4. DOUBLE LINED LEAK DETECTION SYSTEMS DESIGN ITEMS

A. A double-lined pond is required when any industrial and/or process (non-domestic) wastewater is stored. Plans for a single-lined pond storing and/or treating only domestic

(sanitary) wastewater shall be prepared and submitted in accordance with WTS-5: Guidance Document for Design of Wastewater Treatment Ponds.

B. The liner materials shall be at least 60-mil (primary liner) and 40-mil (secondary liner) thick, respectively, and made of HDPE or approved equivalent material (e.g. LLDPE, PVC, Polypropylene, etc.).

C. The leak collection material between the two liners shall be designed to rapidly transmit primary liner leakage to a collection sump and prevent hydraulic head transference from the primary liner onto the secondary liner. This interstitial material should be an engineered geo-net or equivalent material.

D. The Leak Collection and Recovery System or LCRS (e.g., collection sump, pumps, collection media, etc.) shall be designed to remove the collected leakage at a rate equal to or greater than the maximum rate collected in the interstitial leak detection media and/or at a rate that prevents the overfilling of the detection sump.

E. The leak detection metering system must allow for accurate recording of the daily volume of leakage from the primary liner.

F. The maximum allowable leakage rate for the primary liner is 500 gallons/acre-day. The action leakage rates for the primary liner should be as follows (note: a more restrictive action leakage rate schedule may be required in the discharge permit on a case-by-case basis):

    i. When the leakage rate exceeds 125 gallons/acre-day, the facility shall develop a plan to identify the source of the leakage. This plan shall be submitted to the BWPC for its review and approval within one months' time upon discovery of the leakage.

    ii. When the leakage rate exceeds 250 gallons/acre-day, the approved plan shall be initiated.

    iii. When the leakage rate exceeds 500 gallons/acre-day, the permittee shall notify the BWPC in writing within five (5) business days, shall cease discharge to the identified leaking pond(s), and shall implement all necessary corrective action measures to mitigate the liner leakage.

    iv. Leak-detection monitoring wells may be required to assess impacts to environment.

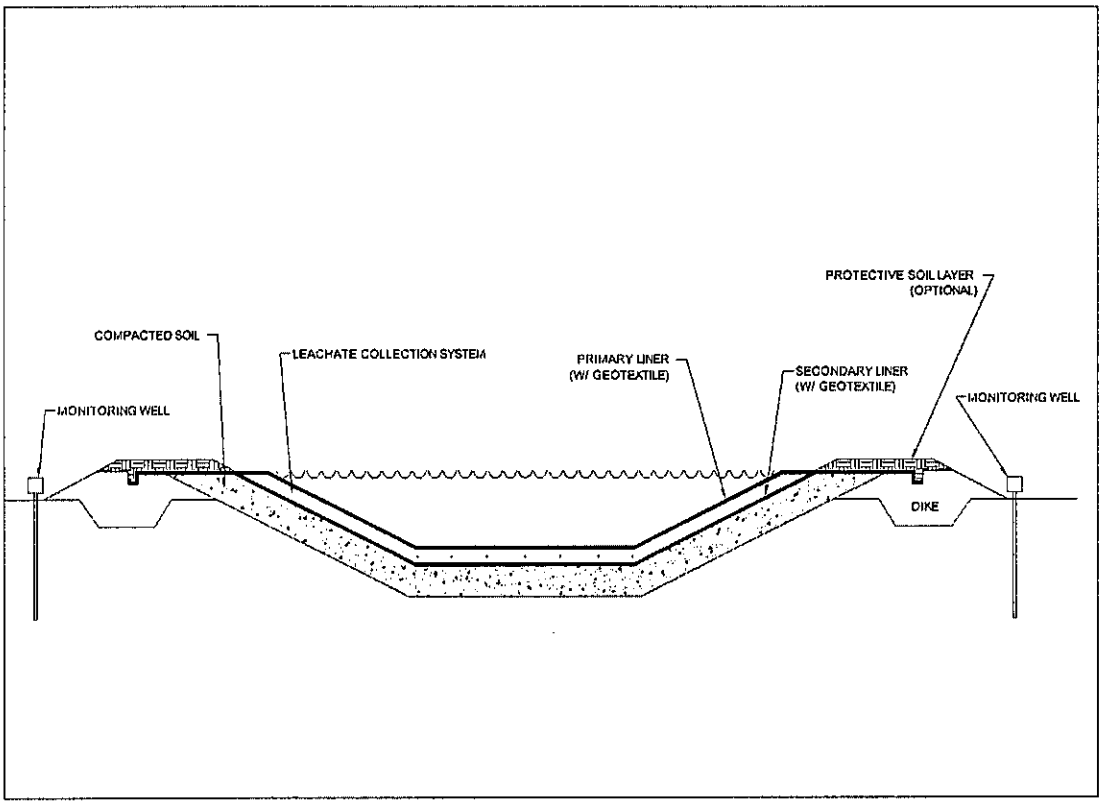

Figure 1 - Example of a Surface Impoundment

References:

1. Geosynthetic Institute, http://www.geosynthetic-institute.org/
2. Ten States Standards, *Recommended Standards for Wastewater Facilities*, http://10statesstandards.com/wastewaterstandards.html
3. U.S. EPA, *Introduction to Land Disposal Units (40 CFR Parts 264/265, Subparts K, L, M, N)*, http://www.epa.gov/osw/inforesources/pubs/hotline/training/ldu05.pdf

EXHIBIT 8

EXHIBIT 8

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PRACTICE STANDARD

WASTE STORAGE FACILITY

(No.)

CODE 313

DEFINITION

A waste storage impoundment made by constructing an embankment and/or excavating a pit or dugout, or by fabricating a structure.

PURPOSE

To temporarily store wastes such as manure, wastewater, and contaminated runoff as a storage function component of an agricultural waste management system.

CONDITIONS WHERE PRACTICE APPLIES

- Where the storage facility is a component of a planned agricultural waste management system
- Where temporary storage is needed for organic wastes generated by agricultural production or processing
- Where the storage facility can be constructed, operated and maintained without polluting air or water resources
- Where site conditions are suitable for construction of the facility
- To facilities utilizing embankments with an effective height of 35 feet or less where damage resulting from failure would be limited to damage of farm buildings, agricultural land, or township and country roads.
- To fabricated structures including tanks, stacking facilities, and pond appurtenances.

CRITERIA

General Criteria Applicable to All Waste Storage Facilities.

Laws and Regulations. Waste storage facilities must be planned, designed, and constructed to meet all federal, state, and local laws and regulations.

Location. To minimize the potential for contamination of streams, waste storage facilities should be located outside of floodplains. However, if site restrictions require location within a floodplain, they shall be protected from inundation or damage from a 25-year flood event, or larger if required by laws, rules, and regulations. Waste storage facilities shall be located so the potential impacts from breach of embankment, accidental release, and liner failure are minimized; and separation distances are such that prevailing winds and landscape elements such as building arrangement, landforms, and vegetation minimize odors and protect aesthetic values.

Storage Period. The storage period is the maximum length of time anticipated between emptying events. The minimum storage period shall be based on the timing required for environmentally safe waste utilization considering the climate, crops, soil, equipment, and local, state, and federal regulations.

Design Storage Volume. The design storage volume equal to the required storage volume, shall consist of the total of the following as appropriate:

(a) Manure, wastewater, and other wastes accumulated during the storage period

(b) Normal precipitation less evaporation on

the surface area (at the design storage volume level) of the facility during the storage period

(c) Normal runoff from the facility's drainage area during the storage period

(d) 25-year, 24-hour precipitation on the surface (at the required design storage volume level) of the facility

(e) 25-year, 24-hour runoff from the facility's drainage area

(f) Residual solids after liquids have been removed. A minimum of 6 inches shall be provided for tanks

(g) Additional storage as may be required to meet management goals or regulatory requirements

Inlet. Inlets shall be of any permanent type designed to resist corrosion, plugging, freeze damage and ultraviolet ray deterioration while incorporating erosion protection as necessary.

Emptying Component. Some type of component shall be provided for emptying storage facilities. It may be a facility such as a gate, pipe, dock, wet well, pumping platform, retaining wall, or ramp. Features to protect against erosion, tampering, and accidental release shall be incorporated as necessary.

Accumulated Solids Removal. Provision shall be made for periodic removal of accumulated solids to preserve storage capacity. The anticipated method for doing this must be considered in planning, particularly in determining the configuration of ponds and type of seal, if any.

Safety. Design shall include appropriate safety features to minimize the hazards of the facility. Ramps used to empty liquids shall have a slope of 4 horizontal to 1 vertical or flatter. Those used to empty slurry, semi-solid, or solid waste shall have a slope of 10 horizontal to 1 vertical or flatter unless special traction surfaces are provided. Warning signs, fences, ladders, ropes, bars, rails, and other devices shall be provided, as appropriate, to ensure the safety of humans and livestock. Ventilation and warning signs must be provided for covered waste holding structures, as necessary, to prevent explosion, poisoning, or asphyxiation. Pipelines shall be provided with a water-sealed trap and vent, or similar device, if there is a potential, based on design configuration, for gases to enter buildings or other confined spaces. Ponds and uncovered fabricated structures for liquid or slurry waste with walls less than 5 feet above ground surface shall be fenced and warning signs posted to prevent children and others from using them for other than their intended purpose.

Erosion Protection. Embankments and disturbed areas surrounding the facility shall be treated to control erosion.

Liners. Liners shall meet or exceed the criteria in Pond Sealing or Lining (521).

Additional Criteria for Waste Storage Ponds

Soil and foundation. The pond shall be located in soils with an acceptable permeability that meets all applicable regulation, or the pond shall be lined. Information and guidance on controlling seepage from waste impoundments can be found in the Agricultural Waste Management Field Handbook (AWMFH), Appendix 10D.

The pond shall have a bottom elevation that is a minimum of 2 feet above the seasonal high water table unless features of special design are incorporated that address buoyant forces, pond seepage rate and non-encroachment of the water table by contaminants. The water table may be lowered by use of perimeter drains, if feasible, to meet this requirement.

Maximum Operating Level. The maximum operating level for waste storage ponds shall be the pond level that provides for the required volume less the volume contribution of precipitation and runoff from the 25-year, 24-hour storm event plus the volume allowance for residual solids after liquids have been removed. A permanent marker or recorder shall be installed at this maximum operating level to indicate when drawdown should begin. The marker or recorder shall be referenced and explained in the O&M plan.

Outlet. No outlet shall automatically release storage from the required design volume. Manually operated outlets shall be of permanent type designed to resist corrosion and plugging.

Embankments. The minimum elevation of the top of the settled embankment shall be 1 foot above the waste storage pond's required volume. This height shall be increased by the amount needed to ensure that the top elevation will be maintained after settlement. This increase shall be not less than 5 percent. The minimum top widths are shown in Table 1. The combined side slopes of the settled embankment shall not be less than 5 horizontal to 1 vertical, and neither slope shall be steeper than 2 horizontal to 1 vertical unless provisions are made to provide stability.

Table 1 – Minimum Top Widths

Total embankment Height, ft.	Top Width, ft.
15 or less	8
15 – 20	10
20 – 25	12
25 – 30	14
30 – 35	15

Excavations. Unless supported by a soil investigation, excavated side slopes shall be no steeper than 2 horizontal to 1 vertical.

Additional Criteria for Fabricated Structures

Foundation. The foundations of fabricated waste storage structures shall be proportioned to safely support all superimposed loads without excessive movement or settlement.

Where a non-uniform foundation cannot be avoided or applied loads may create highly variable foundation loads, settlement should be calculated from site-specific soil test data. Index tests of site soil may allow correlation with similar soils for which test data is available. If no test data is available, presumptive bearing strength values for assessing actual bearing pressures may be obtained from Table 2 or another nationally recognized building code. In using presumptive bearing values, adequate detailing and articulation shall be provided to avoid distressing movements in the structure.

Foundations consisting of bedrock with joints, fractures, or solution channels shall be treated or a separation distance provided consisting of a minimum of 1 foot of impermeable soil between the floor slab and the bedrock or an alternative that will achieve equal protection.

Table 2 - Presumptive Allowable Bearing Stress Values[1]

Foundation Description	Allowable Stress
Crystalline Bedrock	12000 psf
Sedimentary Rock	6000 psf
Sandy Gravel or Gravel	5000 psf
Sand, Silty Sand, Clayey Sand, Silty Gravel, Clayey Gravel	3000 psf
Clay, Sandy Clay, Silty Clay, Clayey Silt	2000 psf

[1] Basic Building Code, 12th Edition, 1993, Building Officials and Code Administrators, Inc. (BOCA)

Liquid Tightness. Applications such as tanks, that require liquid tightness shall be designed and constructed in accordance with standard engineering and industry practice appropriate for the construction materials used to achieve this objective.

Structural Loadings. Waste storage structures shall be designed to withstand all anticipated loads including internal and external loads, hydrostatic uplift pressure, concentrated surface and impact loads, water pressure due to seasonal high water table, and frost or ice pressure and load combinations in compliance with this standard and applicable local building codes.

The lateral earth pressures should be calculated from soil strength values determined from the results of appropriate soil tests. Lateral earth pressures can be calculated using the procedures in TR-74. If soil strength tests are not available, the presumptive lateral earth pressure values indicated in Table 3 shall be used.

TABLE 3 - LATERAL EARTH PRESSURE VALUES[1]

Soil		Equivalent fluid pressure (lb/ft^2/ft of depth)			
		Above seasonal high water table[2]		Below seasonal high water table[3]	
Description[4]	Unified Classification[4]	Free-standing walls	Frame tanks	Free-standing walls	Frame tanks
Clean gravel, sand or sand-gravel mixtures (maximum 5% fines)[5]	GP, GW, SP, SW	30	50	80	90
Gravel, sand, silt and clay mixtures (less than 50% fines) Coarse sands with silt and and/or clay (less than 50% fines)	All gravel sand dual symbol classifications and GM, GC, SC, SM, SC-SM	35	60	80	100
Low-plasticity silts and clays with some sand and/or gravel (50% or more fines) Fine sands with silt and/or clay (less than 50% fines)	CL, ML, CL-ML SC, SM, SC-SM	45	75	90	105
Low to medium plasticity silts and clays with little sand and/or gravel (50% or more fines)	CL, ML, CL-ML	65	85	95	110
High plasticity silts and clays (liquid limit more than 50)[6]	CH, MH	-	-	-	-

[1] For lightly-compacted soils (85% to 90% maximum standard density.) Includes compaction by use of typical farm equipment.
[2] Also below seasonal high water table if adequate drainage is provided.
[3] Includes hydrostatic pressure.
[4] All definitions and procedures in accordance with ASTM D 2488 and D 653.
[5] Generally, only washed materials are in this category
[6] Not recommended. Requires special design if used.

Lateral earth pressures based upon equivalent fluid assumptions shall be assigned according to the following conditions:

- **Rigid frame or restrained wall.** Use the values shown in Table 3 under the column "Frame tanks," which gives pressures comparable to the at-rest condition.
- **Flexible or yielding wall.** Use the values shown in Table 3 under the column "Free-standing walls," which gives pressures comparable to the active condition. Walls in this category are designed on the basis of gravity for stability or are designed as a cantilever having a base wall thickness to height of backfill ratio not more than 0.085.

Internal lateral pressure used for design shall be 65 lb/ft^2 where the stored waste is not protected from precipitation. A value of 60

lb/ft^2 may be used where the stored waste is protected from precipitation and will not become saturated. Lesser values may be used if supported by measurement of actual pressures of the waste to be stored. If heavy equipment will be operated near the wall, an additional two feet of soil surcharge shall be considered in the wall analysis.

Tank covers shall be designed to withstand both dead and live loads. The live load values for covers contained in ASAE EP378.3, Floor and Suspended Loads on Agricultural Structures Due to Use, and in ASAE EP 393.2, Manure Storages, shall be the minimum used. The actual axle load for tank wagons having more than a 2,000 gallon capacity shall be used.

If the facility is to have a roof, snow and wind loads shall be as specified in ASAE EP288.5, Agricultural Building Snow and Wind Loads. If the facility is to serve as part of a foundation or support for a building, the total load shall be considered in the structural design.

Structural Design. The structural design shall consider all items that will influence the performance of the structure, including loading assumptions, material properties and construction quality. Design assumptions and construction requirements shall be indicated on standard plans.

Tanks may be designed with or without covers. Covers, beams, or braces that are integral to structural performance must be indicated on the construction drawings. The openings in covered tanks shall be designed to accommodate equipment for loading, agitating, and emptying. These openings shall be equipped with grills or secure covers for safety, and for odor and vector control.

All structures shall be underlain by free draining material or shall have a footing located below the anticipated frost depth. Fabricated structures shall be designed according to the criteria in the following references as appropriate:

- Steel: "Manual of Steel Construction", American Institute of Steel Construction.
- Timber: "National Design Specifications for Wood Construction", American Forest and Paper Association.
- Concrete: "Building Code Requirements for Reinforced Concrete, ACI 318", American Concrete Institute.
- Masonry: "Building Code Requirements for Masonry Structures, ACI 530", American Concrete Institute.

Slabs on Grade. Slab design shall consider the required performance and the critical applied loads along with both the subgrade material and material resistance of the concrete slab. Where applied point loads are minimal and liquid-tightness is not required, such as barnyard and feedlot slabs subject only to precipitation, and the subgrade is uniform and dense, the minimum slab thickness shall be 4 inches with a maximum joint spacing of 10 feet. Joint spacing can be increased if steel reinforcing is added based on subgrade drag theory.

For applications where liquid-tightness is required such as floor slabs of storage tanks, the minimum thickness for uniform foundations shall be 5 inches and shall contain distributed reinforcing steel. The required area of such reinforcing steel shall be based on subgrade drag theory as discussed in industry guidelines such as American Concrete Institute, ACI 360, "Design of Slabs-on-Grade".

When heavy equipment loads are to be resisted and/or where a non-uniform foundation cannot be avoided, an appropriate design procedure incorporating a subgrade resistance parameter(s) such as ACI 360 shall be used.

CONSIDERATIONS

Waste storage facilities should be located as close to the source of waste and polluted runoff as practicable.

Non-polluted runoff should be excluded from the structure to the fullest extent possible except where its storage is advantageous to the operation of the agricultural waste management system.

Freeboard for waste storage tanks should be considered.

Solid/liquid separation of runoff or wastewater entering pond facilities should be considered to minimize the frequency of accumulated

solids removal and to facilitate pumping and application of the stored waste.

Due consideration should be given to environmental concerns, economics, the overall waste management system plan, and safety and health factors.

Considerations for Minimizing the Potential for and Impacts of Sudden Breach of Embankment or Accidental Release from the Required Volume.

Features, safeguards, and/or management measures to minimize the risk of failure or accidental release, or to minimize or mitigate impact of this type of failure should be considered when any of the categories listed in Table 4 might be significantly affected.

The following should be considered either singly or in combination to minimize the potential of or the consequences of sudden breach of embankments when one or more of the potential impact categories listed in Table 4 may be significantly affected:

1. An auxiliary (emergency) spillway
2. Additional freeboard
3. Storage for wet year rather than normal year precipitation
4. Reinforced embankment -- such as, additional top width, flattened and/or armored downstream side slopes
5. Secondary containment

Table 4 - Potential Impact Categories from Breach of Embankment or Accidental Release

1. Surface water bodies -- perennial streams, lakes, wetlands, and estuaries
2. Critical habitat for threatened and endangered species.
3. Riparian areas
4. Farmstead, or other areas of habitation
5. Off-farm property
6. Historical and/or archaeological sites or structures that meet the eligibility criteria for listing in the National Register of Historical Places.

The following options should be considered to minimize the potential for accidental release from the required volume through gravity outlets when one or more of the potential impact categories listed in Table 4 may be significantly affected:

1. Outlet gate locks or locked gate housing
2. Secondary containment
3. Alarm system
4. Another means of emptying the required volume

Considerations for Minimizing the Potential of Waste Storage Pond Liner Failure.

Sites with categories listed in Table 5 should be avoided unless no reasonable alternative exists. Under those circumstances, consideration should be given to providing an additional measure of safety from pond seepage when any of the potential impact categories listed in Table 5 may be significantly affected.

Table 5 - Potential Impact Categories for Liner Failure

1. Any underlying aquifer is at a shallow depth and not confined
2. The vadose zone is rock
3. The aquifer is a domestic water supply or ecologically vital water supply
4. The site is located in an area of solutionized bedrock such as limestone or gypsum.

Should any of the potential impact categories listed in Table 5 be affected, consideration should be given to the following:

1. A clay liner designed in accordance with procedures of AWMFH Appendix 10D with a thickness and coefficient of permeability so that specific discharge is less than 1 x 10^{-6} cm/sec
2. A flexible membrane liner over a clay liner

3. A geosynthetic clay liner (GCL) flexible membrane liner
4. A concrete liner designed in accordance with slabs on grade criteria for fabricated structures requiring water tightness

Considerations for Improving Air Quality

To reduce emissions of greenhouse gases, ammonia, volatile organic compounds, and odor, other practices such as Anaerobic Digester – Ambient Temperature (365), Anaerobic Digester – Controlled Temperature (366), Waste Facility Cover (367), and Composting Facility (317) can be added to the waste management system.

Adjusting pH below 7 may reduce ammonia emissions from the waste storage facility but may increase odor when waste is surface applied (see Waste Utilization, 633).

Some fabric and organic covers have been shown to be effective in reducing odors.

PLANS AND SPECIFICATIONS

Plans and specifications shall be prepared in accordance with the criteria of this standard and shall describe the requirements for applying the practice to achieve its intended use.

OPERATION AND MAINTENANCE

An operation and maintenance plan shall be developed that is consistent with the purposes of the practice, its intended life, safety requirements, and the criteria for its design.

The plan shall contain the operational requirements for emptying the storage facility. This shall include the requirement that waste shall be removed from storage and utilized at locations, times, rates, and volume in accordance with the overall waste management system plan.

In addition, for ponds, the plan shall include an explanation of the permanent marker or recorder installed to indicate the maximum operating level.

The plan shall include a strategy for removal and disposition of waste with the least environmental damage during the normal storage period to the extent necessary to insure the pond's safe operation. This strategy is for the removal of the contribution of unusual storm events that may cause the pond to fill to capacity prematurely with subsequent design inflow and usual precipitation prior to the end of the normal storage period.

Development of an emergency action plan should be considered for waste storage facilities where there is a potential for significant impact from breach or accidental release. The plan shall include site-specific provisions for emergency actions that will minimize these impacts.

EXHIBIT 9

EXHIBIT 9

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PRACTICE STANDARD

WASTE TREATMENT LAGOON

(No.)

CODE 359

DEFINITION

A waste treatment impoundment made by constructing an embankment and/or excavating a pit or dugout.

PURPOSE

To biologically treat waste, such as manure and wastewater, and thereby reduce pollution potential by serving as a treatment component of a waste management system.

CONDITIONS WHERE PRACTICE APPLIES

- Where the lagoon is a component of a planned agricultural waste management system.
- Where treatment is needed for organic wastes generated by agricultural production or processing.
- On any site where the lagoon can be constructed, operated and maintained without polluting air or water resources.
- To lagoons utilizing embankments with an effective height of 35 feet or less where damage resulting from failure would be limited to damage of farm buildings, agricultural land, or township and country roads.

CRITERIA

General Criteria for All Lagoons

Laws and Regulations. All Federal, state, and local laws, rules, and regulations governing the construction and use of waste treatment lagoons must be followed.

Location. To minimize the potential for contamination of streams, lagoons should be located outside of floodplains. However, if site restrictions require location within a floodplain, they shall be protected from inundation or damage from a 25-year flood event, or larger if required by laws, rules, and regulations. Lagoons shall be located so the potential impacts from breach of embankment, accidental release, and liner failure are minimized; and separation distances are such that prevailing winds and landscape elements such as building arrangement, landforms, and vegetation minimize odors and protect aesthetic values.

Lagoons should be located so they have as little drainage area as possible. If a lagoon has a drainage area, the volume of normal runoff during the treatment period and 25-year, 24-hour storm event runoff shall be included in the required volume of the lagoon.

Soils and Foundation. The lagoon shall be located in soils with an acceptable permeability that meets all applicable regulations, or the lagoon shall be lined. Information and guidance on controlling seepage from waste impoundments can be found in the Agricultural Waste Management Field Handbook (AWMFH), Appendix 10D.

The lagoon shall have a bottom elevation that is a minimum of 2 feet above the seasonal high water table unless special design features are incorporated that address buoyant forces, lagoon seepage rates, and non-encroachment of the water table by contaminants. The water table may be lowered by use of perimeter drains to meet this requirement.

Flexible Membranes. Flexible membrane liners shall meet or exceed the requirements of flexible membrane linings specified in Pond Sealing or Lining, Flexible Membrane (code 521A).

Required Volume. The lagoon shall have the capability of storing the following volumes:

- Volume of accumulated sludge for the period between sludge removal events;
- Minimum treatment volume (anaerobic lagoons only);
- Volume of manure, wastewater, and other wastes accumulated during the treatment period;
- Depth of normal precipitation less evaporation on the surface area (at the required volume level) of the lagoon during the treatment period;
- Depth of the 25-year, 24-hour storm precipitation on the surface area (at the required volume level) of the lagoon.

Treatment Period. The treatment period is the detention time between drawdown events. It shall be the greater of either 60 days; or the time required to provide the storage that allows environmentally safe utilization of waste considering the climate, crops, soil, and equipment requirements; or as required by local, state, and Federal regulations.

Waste Loading. Daily waste loading shall be based on the maximum daily loading considering all waste sources that will be treated by the lagoon. Reliable local information or laboratory test data should be used if available. If local information is not available Chapter 4 of the AWMFH may be used for estimating waste loading.

Embankments. The minimum elevation of the top of the settled embankment shall be 1 foot above the lagoon's required volume. This height shall be increased by the amount needed to ensure that the top elevation will be maintained after settlement. This increase shall be not less than 5 percent. The minimum top widths are shown in Table 1. The combined side slopes of the settled embankment shall not be less than 5 horizontal to 1 vertical, and neither slope shall be steeper than 2 horizontal to 1 vertical unless provisions are made to provide stability.

Table 1 – Minimum Top Widths

Total embankment Height, ft.	Top Width, ft.
15 or less	8
15 – 20	10
20 – 25	12
25 – 30	14
30 – 35	15

Excavations. Unless supported by a soil investigation, excavated side slopes shall be no steeper than 2 horizontal to 1 vertical.

Inlet. Inlets shall be of any permanent type designed to resist corrosion, plugging, freeze damage, and ultraviolet ray deterioration, while incorporating erosion protection as necessary. Inlets shall be provided with a water-sealed trap and vent, or similar device if there is a potential, based on design configuration, for gases to enter buildings or other confined spaces.

Outlet. Outlets from the required volume shall be designed to resist corrosion and plugging. No outlet shall automatically discharge from the required volume of the lagoon.

Facility for Drawdown. Measures that facilitate safe drawdown of the liquid level in the lagoon shall be provided. Access areas and ramps used to withdraw waste shall have slopes that facilitate a safe operating environment. Docks, wells, pumping platforms, retaining walls, etc. shall permit drawdown without causing erosion or damage to liners.

Sludge Removal. Provision shall be made for periodic removal of accumulated sludge to preserve the treatment capacity of the lagoon.

Erosion Protection. Embankments and disturbed areas surrounding the lagoon shall be treated to control erosion. This includes the inside slopes of the lagoon as needed to protect the integrity of the liner.

Safety. Design shall include appropriate safety features to minimize the hazards of the

lagoon. The lagoon shall be fenced around the perimeter and warning signs posted to prevent children and others from using it for other than its intended purpose.

Additional Criteria for Anaerobic Lagoons

Loading Rate. Anaerobic lagoons shall be designed to have a minimum treatment volume based on Volatile Solids (VS) loading per unit of volume. The maximum loading rate shall be as indicated in AWMFH Figure 10-22 or according to state regulatory requirements, whichever is more stringent.

Operating Levels. The maximum operating level shall be the lagoon level that provides the required volume less the 25-year, 24-hour storm event precipitation on the surface of the lagoon. The maximum drawdown level shall be the lagoon level that provides volume for the required minimum treatment volume plus the volume of accumulated sludge between sludge removal events. Permanent markers shall be installed at these elevations. The proper operating range of the lagoon is above the maximum drawdown level and below the maximum operating level. These markers shall be referenced and described in the O&M plan.

Depth Requirements. The minimum depth at maximum drawdown shall be 6 feet. If subsurface conditions prevent practicable construction to accommodate the minimum depth at maximum drawdown, a lesser depth may be used, if the volume requirements are met.

Additional Criteria for Naturally Aerobic Lagoons

Loading Rate. Naturally aerobic lagoons shall be designed to have a minimum treatment surface area as determined on the basis of daily BOD_5 loading per unit of lagoon surface. The required minimum treatment surface area shall be the surface area at maximum drawdown. The maximum loading rate shall be as indicated by AWMFH Figure 10-25 or according to state regulatory requirements, whichever is more stringent.

Operating Levels. The maximum operating level shall be the lagoon level that provides the required volume less the 25-year, 24-hour storm event on the lagoon surface. The maximum drawdown level shall be the lagoon level that provides volume for the volume of manure, wastewater, and clean water accumulated during the treatment period plus the volume of accumulated sludge between sludge removal events. Permanent markers shall be installed at these elevations. The proper operating range of the lagoon is above the maximum drawdown level and below the maximum operating level. These markers shall be referenced and described in the O&M plan.

Depth Requirements. The minimum depth at maximum drawdown shall be 2 feet. The maximum liquid level shall be 5 feet.

Additional Criteria for Mechanically Aerated Lagoons

Loading Rate. Mechanically aerated waste treatment lagoons' treatment function shall be designed on the basis of daily BOD_5 loading and aeration equipment manufacturer's performance data for oxygen transfer and mixing. Aeration equipment shall provide a minimum of 1 pound of oxygen for each pound of daily BOD_5 loading.

Operating Levels. The maximum operating level shall be the lagoon level that provides the required lagoon volume less the 25-year, 24-hour storm event precipitation and shall not exceed the site and aeration equipment limitations. A permanent marker or recorder shall be installed at this elevation. The proper operating range of the lagoon is below this elevation and above the minimum treatment elevation established by the manufacturer of the aeration equipment. This marker shall be referenced and described in the O&M plan.

CONSIDERATIONS

General

Lagoons should be located as close to the source of waste as possible.

Solid/liquid separation treatment should be considered between the waste source and the lagoon to reduce loading.

The configuration of the lagoon should be based on the method of sludge removal and method of sealing.

Due consideration should be given to economics, the overall waste management system plan, and safety and health factors.

Considerations for Minimizing the Potential for and Impacts of Sudden Breach of Embankment or Accidental Release from the Required Volume

Features, safeguards, and/or management measures to minimize the risk of embankment failure or accidental release, or to minimize or mitigate impact of this type of failure should be considered when any of the categories listed in Table 2 might be significantly affected.

The following should be considered either singly or in combination to minimize the potential of or the consequences of sudden breach of embankments when one or more of the potential impact categories listed in Table 2 may be significantly affected:

- An auxiliary (emergency) spillway
- Additional freeboard
- Storage volume for the wet year rather than normal year precipitation
- Reinforced embankment -- such as, additional top width, flattened and/or armored downstream side slopes
- Secondary containment
- Water level indicators or recorders

Table 2- Potential Impact Categories from Breach of Embankment or Accidental Release

1. Surface water bodies -- perennial streams, lakes, wetlands, and estuaries
2. Critical habitat for threatened and endangered species
3. Riparian areas
4. Farmstead, or other areas of habitation
5. Off-farm property
6. Historical and/or archaeological sites or structures that meet the eligibility criteria for listing in the National Register of Historical Places

The following should be considered to minimize the potential for accidental release from the required volume through gravity outlets when one or more of the potential impact categories listed in Table 2 may be significantly affected:

- Outlet gate locks or locked gate housing
- Secondary containment
- Alarm system
- Another means of emptying the required volume

Considerations for Minimizing the Potential of Lagoon Liner Seepage

Consideration should be given to providing an additional measure of safety from lagoon seepage when any of the potential impact categories listed in Table 3 may be affected.

Table 3 - Potential Impact Categories for Liner Seepage

1. Any underlying aquifer is at a shallow depth and not confined
2. The vadose zone is rock
3. The aquifer is a domestic water supply or ecologically vital water supply
4. The site is located in an area of carbonate rock (limestone or dolomite)

Should any of the potential impact categories listed in Table 3 be affected, consideration should be given to the following:

- A clay liner designed in accordance with procedures of AWMFH, Appendix 10D with a thickness and coefficient of permeability so that specific discharge is less than 1×10^{-6} cm/sec.
- A flexible membrane liner
- A geosynthetic clay liner (GCL) flexible membrane liner
- A concrete liner designed in accordance with slabs on grade criteria, Waste Storage Facility (313), for fabricated structures requiring water tightness.

Considerations for Improving Air Quality

To reduce emissions of greenhouse gases, ammonia, volatile organic compounds, and odor:

- Reduce the recommended loading rate for anaerobic lagoons to one-half the values given in AWMFH Figure 10-22.

- Use additional practices such as Anaerobic Digester – Ambient Temperature (365), Anaerobic Digester – Controlled Temperature (366), Waste Facility Cover (367) and Composting Facilities (code 317) in the waste management system.
- Liquid/solid separation prior to discharge to lagoon will reduce volatile solids (VS) loading resulting in reduced gaseous emissions and odors. Composting of solids will further reduce emissions.
- Design lagoons to be naturally aerobic or to allow mechanical aeration.

Adjusting pH below 7 may reduce ammonia emissions from the lagoon but may increase odor when waste is surface applied (See Waste Utilization, code 633).

PLANS AND SPECIFICATIONS

Plans and specifications shall be prepared in accordance with the criteria of this standard and shall describe the requirements for applying the practice to achieve its intended use.

OPERATION AND MAINTENANCE

An operation and maintenance plan shall be developed that is consistent with the purposes of the practice, its intended life, safety requirements, and the criteria for design. The plan shall contain the operational requirements for drawdown and the role of permanent markers. This shall include the requirement that waste be removed from the lagoon and utilized at locations, times, rates, and volume in accordance with the overall waste management system plan. In addition, the plan shall include a strategy for removal and disposition of waste with least environmental damage during the normal treatment period to the extent necessary to insure the lagoon's safe operation. This strategy shall also include the removal of unusual storm events.

Development of an emergency action plan should be considered for lagoons where there is a potential for significant impact from breach or accidental release. The plan shall include site-specific provisions for emergency actions that will minimize these impacts.

EXHIBIT 10

EXHIBIT 10

Written Comments Regarding Smith Valley Dairy Permit Application

Prepared by Kathy J. Martin, PE (OK#18254)

The following written comments were prepared by Kathy J. Martin, PE (OK #18254) at the request of the citizen group, Save Our Smith Valley, in regards to the permit application for a Nevada state groundwater discharge permit as submitted by Smith Valley Dairy. Ms. Martin has a BS in Petroleum Engineering (1983) and a Master's in Civil Engineering (1989) from the University of Oklahoma. She is a licensed professional engineer in the State of Oklahoma (#18254) and New Mexico (#21522). Ms. Martin has performed third-party engineering reviews of CAFO permit applications for over 17 years, including over 200 facilities proposed for permits in 21 states.[1]

Basic Chronology of Permitting Events:

2013

May 2013 – initial contact between NDEP and applicant.[2]
June 2013 – borings and test pit site investigation by Lumos and Associates[3]
July 2013 – Preliminary geotechnical investigation by Lumos and Associates.[4]
September 2013 – Initial Permit Application submitted.[5]

2014

January 2014 – NDEP engineer Kaminski requires double-liner or justification for single liner for all dairy ponds.[6]
January 2014 – NDEP initial comments on Sept 2013 permit application submittal.[7]

March 2014 – AgPro/Applicant response to Jan 22, 2014 NDEP initial comments[8]
March 2014 – NDEP reviewing NRCS liner standards.[9]
March 2014 – AgPro/Applicant informs NDEP that excavation activities are occurring and were observed by NDEP on March 17, 2014.[10]
March 2014 – NDEP reiterates that construction cannot occur without a permit.[11]

April 2014 – AgPro organizes a meeting at NDEP offices.[12]
April 2014 – AgPro is working on the nutrient management plan.[13]

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[1] Kathy J. Martin, PE vita attached as Exhibit 1
[2] NDEP record "Big File, Tab 3 - Correspondence" email dated May 6, 2013
[3] NDEP record "Big File, Loose Combined Binder Report" report dated July 2013
[4] NDEP record "Big File, Loose Combined Binder Report" report dated July 2013
[5] NDEP record "Big File, Tab 6"
[6] NDEP record "Big File, Tab 3 – Correspondence" email dated January 22, 2014
[7] NDEP record "Big File, Tab 3 – Correspondence" email dated January 22, 2014
[8] NDEP record "Big File, Tab 3 – Correspondence" email dated March 10, 2014
[9] NDEP record "Big File, Tab 3 – Correspondence" email dated March 10, 2014
[10] NDEP record "Big File, Tab 3 – Correspondence" email dated March 18, 2014
[11] NDEP record "Big File, Tab 3 – Correspondence" emails dated March 10 and 19, 2014
[12] NDEP record "Big File, Tab 3 – Correspondence" email dated April 1, 2014
[13] NDEP record "Big File, Tab 3 – Correspondence" email dated April 10, 2014

May 2014 – AgPro and NDEP discuss newly issued and public noticed Ponderosa Dairy permit, which is considered to be a template permit for all future CAFOs.[14]
May 2014 – AgPro tells NDEP that a new draft permit [application] will be submitted the following week.[15]
May 2014 – AgPro asks NDEP to influence Lyon County to issue county building permits.[16]
May 2014 – Lyon County emails NDEP regarding building permits.[17]
May 2014 – NDEP site inspection for Stormwater Construction Permit

June 2014 – NDEP tells AgPro that they called Lyon County and that Lyon County has decided to not issue the milking barn permit until the state has issued their permit.[18]
June 2014 – NDEP receives second version of the permit application.[19]
June 2014 – AgPro asks for document saying they can milk up to 700 cows without a permit.[20]
June 2014 – Lyon County issues milking parlor building permit[21]

July 2014 – AgPro submits initial Groundwater Monitoring Plan.[22]
July 2014 – NDEP has informal comments regarding Groundwater Monitoring Plan.[23]
July 2014 – AgPro submits revised Groundwater Monitoring Plan[24]

August 2014 – NDEP prepares comments on revised Groundwater Monitoring Plan.[25]
August 2014 – NDEP tells citizens they can't have access to public file.[26]

September 2014 – AgPro responds to Kaminski deficiency letter of July 31, 2014.[27]
September 2014 – Citizens express concerns that construction is occurring and public is denied access by NDEP to the permit application file.[28]

October 2014 – Significant portions of leak detection section removed.[29]
October 2014 – AgPro and NDEP work on public notice and fact sheet.[30]

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[14] NDEP record "Big File, Tab 3 – Correspondence" email dated May 28, 2014
[15] NDEP record "Big File, Tab 3 – Correspondence" email dated May 30, 2014
[16] NDEP record "Big File, Tab 3 – Correspondence" email dated May 30, 2014
[17] NDEP record "Big File, Loose Binder #1 – EPA and County correspondence" email dated May 27, 2014
[18] NDEP record "Big File, Tab 3 – Correspondence" email dated June 2, 2014
[19] NDEP record "Big File, Tab 3 – Correspondence" email dated June 11, 2014
[20] NDEP record "Big File, Tab 3 – Correspondence" email dated June 17, 2014
[21] Lyon County Building Permit for Milking Parlor attached as Exhibit 2
[22] NDEP record "Big File, Tab 3 – Correspondence" email dated July 16, 2014
[23] NDEP record "Big File, Tab 3 – Correspondence" email dated July 18, 2014
[24] NDEP record "Big File, Tab 3 – Correspondence" email dated July 31, 2014
[25] NDEP record "Big File, Tab 3 – Correspondence" email dated August 15, 2014
[26] NDEP record "Big File, Loose Binder #2 – Smith Valley Residents", email dated August 26, 2014
[27] NDEP record "Big File, Tab 3 – Correspondence" email dated September 15, 2014 and Tab 6
[28] NDEP record "Big File, Loose Binder #2 – Smith Valley Residents", email dated September 25, 2014
[29] NDEP record "Big File, Tab 3 – Correspondence" email dated October 8-10, 2014
[30] NDEP record "Big File, Tab 3 – Correspondence" email dated October 13-November 3, 2014

1. Public Access to files was difficult and inconsistent.

Some parts of the electronic version of the permit application appear to only have been scanned as "one-sided documents" when in fact some of those documents were clearly "double-sided documents". For example, the NRCS Standard for Mortality Disposal has NRCS pagination and the scanned version only includes pages 1, 3 and 5. What is not clear is how many other documents were also double-sided, but because of a lack of pagination, one cannot truly know if the entire document was scanned. For example, parts of the September 15, 2014 submittal as they appear in the scanned version is not paginated. The scanned version refers to "tab 1", "tab 3", etc., which seems to reflect that the submittal may have been in a binder with physical tabs to separate out various documents. The Nutrient Management Plan portion of the June 2014 application only contains 10 of the 27 pages (per the pagination)[31].

Citizens that went in person to acquire a copy of the permit application were provided 2 CDs from Michele Reid. The content of those CDs does not reflect the much more significant document production provided to the citizens (per repetitive written open records request) as a link to an agency online document storage access portal.

Citizens were told during 2014 that they could not have access to the permit application because "it was not complete". There is no requirement that a permit application be complete before honoring a citizen request for a copy of the public file. In fact, at the time of the citizen written requests, the agency was in possession of not one, but two permit applications (November 2013 and June 2014 versions), as well as numerous email exchanges between the applicant and the agency. Those items should have been provided to the citizens in response to both their in-person request and their written requests (email or otherwise).

To add drama to this lack of transparency, citizens were stonewalled at the county level as well. Requests for copies of public files were left unfulfilled for months under some auspicious claim that the District Attorney needed to review the files to see if they qualified as public access documents.

Once we started reading the files, specifically the "Big File – Tab 3 – Correspondence", it became clear that the NDEP had telephone calls with the applicant's consultant (AgPro), Lyon County officials, and perhaps others without producing a "telephone memo to the file". If there are "telephone memo to the file" documents in the file, they were not scanned and provided in the document response. Of particular interest is the email dated June 2, 2014 from Michele Reid to Tom Haren (Ag Pro) that states[32]:

> "With respect to 'something in writing from us to the effect that a CAFO permit is not a requirement necessary for release of the building permit for a milking parlor'

[31] NDEP record "Big File – Tab 6" Second version of Permit Application dated June 4, 2013
[32] NDEP record "Big File, Tab 3 – Correspondence" email dated June 2, 2014

NDEP has spoken recently with Nick Malarchik, Lyon County Building Department Director, regarding the CAFO permit and his recent decisions regarding the Smith Valley Dairy building permits. In that discussion we addressed AgPro's concerns about the building permit for the milking barn and our CAFO permitting process. It is NDEP's understanding that Lyon County has decided to not issue the building permit until permits are in place for the ag well and the CAFO."

This email refers to a fairly important telephone conversation and if this is the only written summation of the telephone call, then the citizens should be concerned that other telephone conversations that are vaguely referred to in emails are not being documented in the public file.

On several occasions, the NDEP, specifically Michele Reid, has told the citizens (via Denise Luk email exchange) that they cannot have access to the public file.

In August, Ms. Reid stated in her email[33]:

"As we discussed, because the permit is still draft, and the application is not complete, I am not able to provide to you the application form. Once the permit has gone out for public notice the file will be open for public review."

In September, Ms Reid stated in her email[34]:

"As stated prior, the application that has been submitted is not a complete or approved application. The facility may delay submission of the complete application, however a permit for CAFO operational discharges will not be issued until the application is complete, reviewed and approved by BWPC. Again, as long as the site does not meet the definition of a CAFO any agricultural related discharges, as described in NAC 445A.228, that occur on the site are exempt from BWPC permitting."

2. True Applicant

Smith Valley Dairy is not a registered business name listed on the State of Nevada Secretary of State website. Building permits from Lyon County are not issued to Smith Valley Dairy (see attached) but are issued to Dirk and Valerie J. Vlot, Trustees.[35]

The initial permit application date-stamped received on September 23, 2013 lists the Owner/Responsible Party as Smith Valley Dairy and the response to Fed Tax ID is "none at this time". The applicant is not presented as an LLC or an incorporated business, so it could be assumed that it is a "dba" or "doing business as" and thus, the Tax ID would be the Social Security Number for the owner of the business. The application was signed by Dirk Vlot "owner" on September 3, 2013.

[33] NDEP record "Big File – Loose Binder #2 – Smith Valley Residents", email dated August 26, 2014
[34] NDEP record "Big File – Loose Binder #2 – Smith Valley Residents", email dated September 25, 2014
[35] Lyon County Building Permit for Milking Parlor issued June 27, 2014

On page 2 of 3 of the Original Permit Application "Engineer's Narrative" it states: "all land application areas in the nutrient management plan are owned by the dairy.[36]" No deeds, warranty deeds, or other proof of ownership was provided in the September 2013 original permit application. The concern is that it is unclear if the "dairy" that owns the land application land is Smith Valley Dairy (dba) or Dirk and Valerie Vlot, Trustees.

The June 2014 permit application contains the certification signature by Dirk Vlot of September 3, 2013. It does not contain a new certification signature page.

4. Commencement of Construction

Construction was observed by NDEP as early as March 17, 2014 and was confirmed by AgPro/Applicant in a March 18, 2014 email that states, "Currently the excavation activity which you observed at Smith Valley Dairy on 3.17.14 is the borrowing of soil at the proposed pond locations for use in grading of the dairy footprint." This email also includes the AgPro/Applicant's awareness that "Any construction which occurs prior to approval is at the owner's risk and may be required to be redone if the ponds do not receive approval by the Department." The NDEP response was "Thank you Janine. Have a good day! mickie". The NDEP made no other comment in the March 18, 2014 email (time stamped 8:52 am) with respect to whether or not the applicant has been authorized to commence construction of the dairy. However, the NDEP did send another email on March 18, 2014 (time stamped 10:03 am) that states "as a follow-up I just wanted to provide you with our State regulation that supports our conversation." – thus implying there was a telephone conversation between 9:00 and 10:00 am on March 18, 2014. No telephone memorandum was included in the public file that details who was on the call nor any information about what was discussed.

The 10:03 am email does include regulation citation as follows:

> NAC 445A.283 Permit required to construct, install, expand, or modify treatment works. (NRS 445A, 425, 445A, 585) No person without first obtaining a permit from the Department may:
>
> 1. Construct, install, expand or significantly modify any factory, mill, plant or other industrial or commercial facility which will result in a discharge not authorized by an existing permit to waters of the State.
> 2. Add extensions to existing municipal or privately owned sewer systems or provide a new sewer service to existing or newly constructed buildings which could cause the raw sewage influent to the treatment plant to exceed the limits prescribed by the permit issued in accordance with NAC 445A.228 to 44A.263 inclusive.
> 3. Construct, install or significantly modify any facilities designed or used for treatment or discharge of pollutants.
>
> [Environmental Comm'n, Water Pollution Control Reg §§ 3.1.1-3.1.3, eff 5-2-78] – (Substituted in revision for NAC 445.179)

[36] NDEP record "Big File – Tab 6" Original Permit Application dated September 19, 2013

The AgPro/Applicant response at 10:03 the same day asks "Do we need to wait for it to be public noticed as well prior to initiating construction?" To which the NDEP responded at 10:32 on March 19, 2014, "Construction may not be initiated until there is a permit in place. So yes, you will need to wait until the public notice is complete and comments have been addressed and the permit officially issued."

Thus on March 19, 2014, the Applicant was informed by the NDEP that construction may not commence until a permit is officially issued. That permit has still not even today been officially issued as we are now in the public comment period discussed in that same March 2014 email. We are in January 2015, basically nine months after the applicant knew it cannot construct – and yet, the applicant continued to construct the dairy as can be testified to by the neighbors who witnessed the construction activity. This expert observed the construction activity the day before the public meeting and noted that both waste storage ponds were fully excavated and lined with plastic sheeting – thus "constructed".

An earlier email thread dated March 10, 2014 (time stamped 12:49) from Michele Reid to Janine Baratta (AgPro) references standard language requirements including:

> **B.CO.14 Facility Specifications:** The waste collection, storage, and treatment facilities shall be constructed in conformance with plans approved by the Division. The plans must be approved by the Division prior to initiating construction activities. All changes to approved plans must be approved by the Division prior to implementation."

Email discussions in June 2014 between Janie Knuffke (AgPro) and Michele Reid include the following request[37]:

> "Explanation of the CAFO permit as not "subjective" and that we can milk up to 700 cows without a permit."

At this point, one must ask how experienced folks are at Ag Professionals (AgPro) and why they would ever think that any dairy could be constructed without a permit if they just kept the numbers below 700 animals. The federal law triggers a permit at 200 animal units, not in number of animals. The state law allows an exemption if less than 700 dairy cows, but Smith Valley Dairy has never been described as a dairy with only 700 dairy cows. It has always been described as a significantly larger dairy with at least 4000 mature dairy cows and nearly 4000 heifers and calves. Perhaps, AgPro was scrambling for a reason to keep constructing the unpermitted dairy without being in violation of state law requiring a permit before construction?

In May 2014, NDEP and Lyon County Building Department Director, Nick Malarchik, exchanged emails regarding the building permits to be issued after NDEP issues their permit.[38] The email states:

[37] NDEP record "Big File, Tab 3 – Correspondence" email dated June 17, 2014

> "However, I have advised this developer that we will not issue a building permit for the milking barn or the commodity (feeding) barn until they have evidence of the required permits from Division of Water Resources to lawfully drill an agriculture well and from NDEP (CAFO permit) that provides for drainage and waste disposal."

The Bureau of Water Pollution Control Guidance Document for the Design of a Lined Wastewater Holding Pond, WTS-37 (Revised September 2011) states in the first paragraph[39]:

> "Surface impoundments storing and/or treating wastewater require a discharge permit to be issued from BWPC prior to commencement of construction and operation."

Finally, the proposed draft permit includes this statement on page 26 and 27 of 41:

> "The waste collection, storage, and treatment facilities shall be constructed in conformance with plans approved by the Division. The plans must be approved by the Division prior to initiating construction activities. All changes to approved plans must be approved by the Division prior to implementation."

In the face of all of these directives to obtain a permit prior to construction, the applicant continued to construct the dairy facility and its waste management systems without a state permit to do so.

5. Groundwater Monitoring Plan

The first version of the Groundwater Monitoring Plan appears to have been submitted by AgPro to NDEP on July 15, 2014. The version provided in the electronic public document request response has an email followed by a cover sheet, two pages of text, a blank page, and two aerial maps (ST-2: GW Elevation Map and St-1: Site Vicinity Map). It is unclear what the blank page represents.

On July 18, 2014, an email by Michele Reid provides "informal comments from our engineering group regarding the Groundwater Monitoring Plan", such as the plan lacks overall detail; someone misunderstood how to show groundwater flow direction; that the drawings need to have more details; well placement locations don't have distances to treatment facility; and lack of GPS coordinates. Interestingly enough, the example of monitoring well detail provided by NDEP is the same image used by AgPro to describe how they will be constructing monitoring wells. This begs the question as to whether AgPro has experience installing monitoring wells if they rely upon illustrations from NDEP rather than illustrations their own engineers have drawn.

[38] NDEP record "Big File – Loose Binder #1 – EPA and County communication" email dated May 27, 2014

[39] The word 'prior' is underlined in the guidance document to emphasize when construction can occur

The Groundwater Monitoring Plan dated July 31, 2014 includes a map showing the location of the three proposed groundwater monitoring wells (one upgradient, two downgradient)[40]. The "upgradient" well is proposed to be located near the southeast corner of the South Pond. Unfortunately that is "downgradient" from the unlined manure solids storage area. Any leakage from the stored manure solids that enters the subsurface can contaminate shallow groundwater, thus negating the whole purpose of having an upgradient well to show whether pollution is greater downgradient. That well could be used to determine if the manure piles are causing pollution.

The applicant should propose another location onsite that is upgradient from all manure storage areas including the corrals. It should be clear that the location of the waste storage ponds is on the farthest north portion of the dairy property and any groundwater pollution that occurs will almost certainly escape the property boundary as it is being detected in the monitoring wells. The NDEP has not provided sufficient safety net to allow for detection of groundwater pollution before it leaves the dairy property.

6. Volume of Allowable Seepage and Mass Loading of Nitrogen and Salts to Shallow Groundwater

The volume of allowable seepage can be calculated (assuming 500 gal/acre/day) as follows:

North Pond working surface area = 256,200 ft2 = 5.88 acre
South Pond working surface area = 219,600 ft2 = 5.04 acres

Allowable Seepage Volume:
500 gal/acre/day x (5.88 + 5.04 acres) x 365 days/yr = 1,993,423 gal/year

Seepage volume for South Pond only = 1,076,100 gal/yr

Mass loading of nitrogen in seepage:
1.9 mil gal x 758 ppm Nitrogen x 8.34 lbs/gal = 12,011 lbs nitrogen per year
South Pond only: 1.076 mil gal x 758 ppm Nitrogen x 8.34 lbs/gal = 6,783 lbs N/yr

Mass loading of total dissolved solids (salts) in seepage:
1.9 mil gal x 4258 ppm TDS x 8.34 lbs/gal = 67,472 lbs TDS
South Pond only: 1.076 mil gal x 4258 ppm TDS x 8.34 lbs/gal = 38,211 lbs TDS

Over the expected operating life of 20 years, this dairy would be allowed to discharge into the shallow groundwater nearly 40 million gallons of milking parlor wastewater, manure wastewater, and contaminated stormwater by virtue of an allowed seepage rate for the two waste storage ponds. That permitted volume would contain up to 250,000 lbs of nitrogen and 1,349,440 lbs of total dissolved solids.

[40] NDEP record "Big File – Tab 6" Sheet ST-1 of the amended Groundwater Monitoring Plan July 31, 2014

Using Conservation of Mass ($C_1V_1 = C_2V_2$), one can predict the volume of the shallow aquifer that must be contaminated to maintain a maximum concentration of 10 ppm nitrates as follows:

C_1 = 758 ppm nitrogen
V_1 = 1.9 million gallons
C_2 = 10 ppm nitrogen
V_2= volume of aquifer needed to dilute pollution

V2 = (758 ppm x 1.9 million)/10 ppm = 144 million gallons of shallow aquifer per year

Assuming the shallow aquifer is composed of sand with porosity of 30%, the volume of aquifer that would be impacted each year is calculated as:

144 million gallons x ft3/7.48 gal = 19,254,010 ft^3 of groundwater

Volume of aquifer available for groundwater is 30% of the total volume, divide by 0.30 to get the volume of sand and water impacted: 64,180,036 cubic feet.

The areal extent of the dairy is approximately 140 acres or 6,098,400 ft^2. Dividing that into the volume of aquifer suggests at least 10 feet of the aquifer below the entire dairy will be polluted to 10 ppm when the first year's allowable seepage volume hits the shallow aquifer and disperses.

Similar calculations can be made for total dissolved solids (TDS) as follows:

C_1 = 4258 ppm TDS
V_1 = 1.9 million gallons
C_2 = 10 ppm nitrogen
V_2= volume of aquifer needed to dilute pollution

V2 = (758 ppm x 1.9 million)/10 ppm = 144 million gallons of shallow aquifer per year
Assuming the shallow aquifer is composed of sand with porosity of 30%, the volume of aquifer that would be impacted each year is calculated as:

144 million gallons x ft3/7.48 gal = 19,254,010 ft^3 of groundwater

7. Separation distance between liner and shallow groundwater.

In the volume to depth tables provided in the permit application and signed and sealed by Chad Arthur TeVelde (Nevada PE No. 22147), the designed depth of the two waste impoundments is as follows:

North Pond is 11.3 feet below ground surface (bgs)
South Pond is 14.9 feet bgs.

In the Groundwater Monitoring Plan submitted with the Supplemental Application materials, it states:

> "On-site during two separate geotechnical investigations in support of construction, groundwater was encountered at approximately 14-15 feet below grade."

The September 15, 2014 Supplemental answer labeled "# 9 ballast" includes the following statement:

> "Groundwater is more than 4 feet below the liner/pond bottom per the geotechnical investigation."

These statements are incongruous. The NDEP has not explained how the allowable seepage rate and the associated mass loading of pollutants will not violate water quality standards for the shallow aquifer located at 14 feet below ground surface and from 0 to 4 feet below the bottom of the two waste storage ponds.

8. Permits cannot be issued if they will cause degradation of drinking water.

Nevada regulation regarding the protection of ground water quality from degradation in NRS 445A.490 does not allow the issuance of a permit as follows:

> NRS 445A.490 Permits: Issuance prohibited in certain cases. No permit may be issued which authorizes any discharge or injection of fluids through a well into any waters of the State:
>
> 1. Of any radiological, chemical or biological warfare agent or high-level radioactive waste;
> 2. Which would substantially impair anchorage and navigation in any waters of the State;
> **3. Which would result in the degradation of existing or potential underground sources of drinking water;**
> 4. Which is inconsistent with an applicable areawide plan for management of the treatment of waste; or
> 5. Which the Director determines is inconsistent with the regulations and guidelines adopted by the Commission pursuant to NRS 445A.300 to 445A.730, inclusive, including those relating to standards of water quality and injections of fluids through a well.
>
> (Added to NRS by 1973, 1711; A 1985, 766)

The proposed draft permit No. NS2014502, Section A.7 Water Quality Standards on page 21 of 41 states:

"There shall be no discharge of substances that would cause the groundwater quality to degrade below drinking water standards."

On page 24 of 41 of the proposed draft permit it states:

"If the total nitrogen-N concentration increases to 10.0 mg/L, discharge to groundwater shall cease unless authorized with written approval from the Division."

The proposed permit suggests that the discharge to groundwater could actually be stopped without addressing the fact that once the dairy is in operation, it cannot cease milking over 3000 cows every single day and cleaning/sanitizing the milking parlor, both activities which creates the wastewater.

9. Discharge to Wilderness Area and Artesia Lake unnecessary when using evaporation and land application.

The proposed permit allows for a discharge from the South Pond in Section A.2.2 as follows[41]:

"..the Permittee [sic] is authorized to: discharge manure and process wastwater[sic] to land application areas in accordance with a Division reviewed Nutrient Managment[sic] Plan (NMP), and discharge manure and process wastewater in response to storm events or chronic rainfall events that exceed the 25-year 24-hour storm design, provided that the production area is operated in accordance with parts B.CO.3, B.CO.28 and B.CO.29 of this permit."

Part B.CO.3 reads as follows:

"Facilities and their production are must be properly designed, constructed, operated, and maintained to contain manure, pollutants, direct precipitation, and the runoff from a 25-year, 24-hour storm event."

Part B.CO.28 refers to inspection frequency for various aspects of the proposed facility. Part B.CO.29 requires a minimum of two feet of freeboard.

The Engineer's Narrative fails to mention that its proposed discharge is to a Wilderness Area in the following introductory statement:

"Discharges from the facility would ultimately flow through a series of public ditches to the evaporative Artesia Lake, an alkali flat 3 miles north of the facility."

[41] NDEP Record "Big File – Tab 4 - proposed draft permit" page 2 of 41

The design of the North and South Ponds includes storage from the runoff from a 25-year, 24-hour storm event (2.07 inch storm) as indicated in the table titled "Rectangular Waste Storage Pond Design Computations"[42]. That same table provides evaporation volumes for the storage system, but does not provide the pan evaporation rate used to calculate evaporation.

The applicant has access to land for disposal of wastewater by land application and has installed a pipeline to transport that wastewater from the ponds south to the land parcels. The applicant claims it has plenty of its own lands, plus will use other farmland when needed, to dispose of manure and wastewater generated by the dairy.

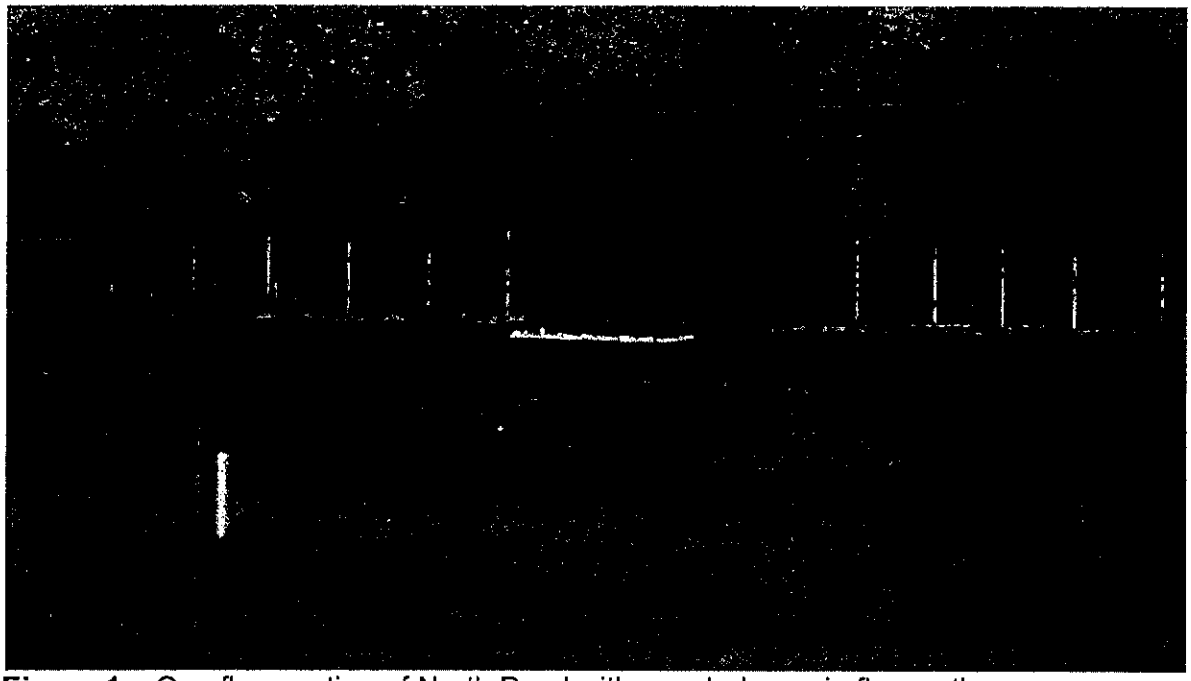


Figure 1 – Overflow portion of North Pond with wooded area in flow path.

There is no reason for NDEP to entertain or allow a discharge from Smith Valley Dairy waste storage ponds that contain high concentrations of nitrogen and salts and allow said discharge to flow across private lands not owned by the Dairy, enter public ditches, a Wilderness Area, and ultimately Artesia Lake. The proposed permit language appears to mimic antiquated federal language rather than use state authority to prohibit discharge so that the permit will be protective of Nevada's waters of the state.

10. Land application of wastewater high in TDS not addressed in permit

In Tab 6 of the permit application, tables are provided for each parcel of land used for land application of manure-laden wastewater stored in North and South Ponds. The

[42] NDEP Record "Appendix A-1"pdf page 14

first table on pdf page 179 refers to land parcel SH-1N. It proposes to land apply 2.6 million gallons of wastewater on 154 acres used to grow corn silage (CS)[43].

Mass loading of total dissolved solids (salts) in land applied wastewater:

> 2.6 mil gal x 4258 ppm TDS x 8.34 lbs/gal = 92,330 lbs TDS
> 92,330 lbs TDS/154 acres = 600 lbs TDS per acre

The applicant does not provide discussion on how elevated levels of TDS will adversely impact expected crop yields at any and all of the land application parcels.

11. Permit language that refers to sewage sludge not appropriate for this facility.

There is no reason to include language in the dairy permit that would allow the disposal of sewage sludge. This facility has a septic system and the only sewage sludge they generate would be better disposed of by a septic hauler and disposal company. The inclusion of such language in the dairy permit causes alarm that this dairy may inadvertently be given authorization to dispose of sewage sludge generated by municipalities.

This includes two definitions: C.1.32 - "biosolids" and C.1.36 - "sewage sludge", which are self-explanatory that they relate to sewage sludge and seem harmless. However, the definition C.1.41 for "land application" is not harmless as written[44]:

> "**Land Application** means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil."

Why would the definition of land application focus on sewage sludge and not manure? Is this an artifact from another permit from which language was borrowed to develop this particular permit?

Section C.13 also refers to sewage sludge as follows:

> "All solid waste screening and sewage sludge shall be disposed of or reused in a manner approved by the Division and the County. Facilities that generate and dispose of sewage sludge, or prepare it for reuse, shall monitor for..."

This dairy *will* have solid waste screening, but to include the words "sewage sludge" in this section is not necessary, and as stated earlier, gives the impression that the facility is permitted to handle and dispose of sewage sludge.

[43] NDEP record "Big File - Tab 6" pdf page 167, Table of acreage for each land application parcel
[44] NDEP Record "Big File – Tab 4 - proposed draft permit" page 34 of 41

On page 41 of 41 of the proposed permit, there is a section on Public Owned Treatment Works (C.34) and Existing Manufacturing, Commercial, Mining, and Silvicultural Discharges (C.36). What does any of that have to do with a dairy CAFO and why is that language included in the proposed draft permit?

12. Lack of designed area for solid/sludge removal equipment.

The constructed waste storage ponds do not seem to have a designated area for equipment to be used to remove solids/sludges that would serve to protect the plastic liner from damage. Figure 2 shows the installed liner area near the inlet pipe to illustrate the lack of a protective concrete pad or other installation.

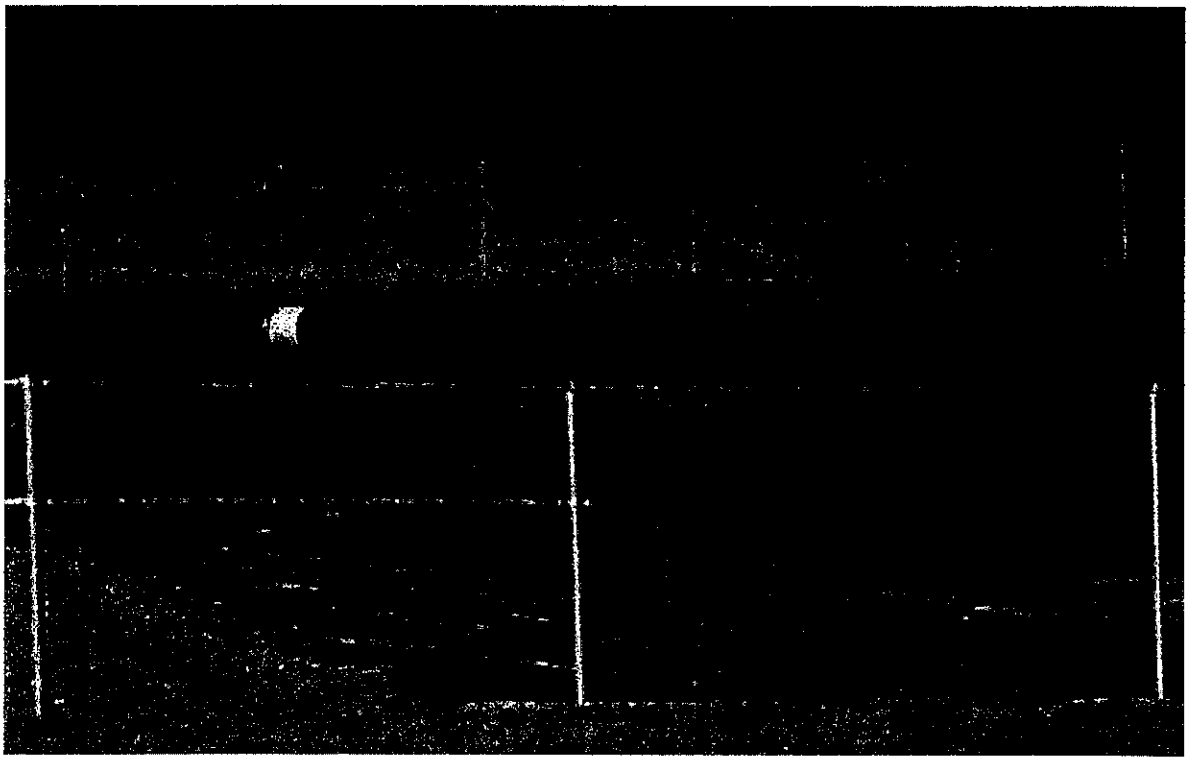


Figure 2 – Photo of inlet pipe and corner of waste storage pond taken January 2015.

13. Waste calculations do not include silage leachate.

Fermented silage by its very nature generates silage leachate in the first month of storage. According to the NRCS, approximately 0.5 cubic foot of leachate is generated per ton of stored silage[45]. Silage leachate exhibits low pH, has high concentrations of nitrates and ammonia, and can cause severe adverse impacts to surface and ground water quality. The design engineer for Smith Valley Dairy did not provide calculations of the volume of leachate based on expected tonnage of ensiled storage.

[45] ftp://ftp.wcc.nrcs.usda.gov/wntsc/AWM/handbook/ch4.pdf page 4-39

Expert Opinion

After reviewing the Smith Valley Dairy permit application and the NDEP proposed draft ground water discharge permit, this expert has found significant and numerous deficiencies in the permit application and several critical errors in the proposed draft permit. Although this report is not an exhaustive list of all deficiencies, it identifies enough problems with the application to warrant the Bureau to require additional information prior to issuing any permit.

It is my professional engineering opinion that the Bureau should not issue the proposed draft permit as it is currently written based on inappropriate language in the draft permit and because the permit application is lacking fundamental information necessary to evaluate the impacts to surface and ground water, the wilderness area, and Artesia Lake.

Kathy J. Martin, PE (OK#18254)

January 29, 2015
Date:

Seal:

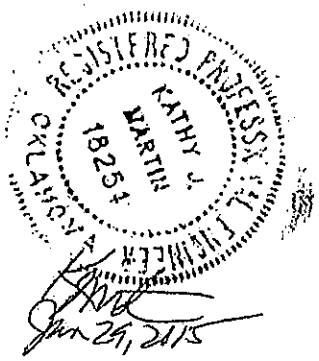


EXHIBIT 11

EXHIBIT 11

Michele Reid

From: Michele Reid
Sent: Thursday, August 28, 2014 3:08 PM
To: 'Denise Luk'
Subject: RE: Smith Valley Dairy Construction Stormwater Permit

Denise,
All our applications are now done online, we do not have paper applications. The information I provided to you is the public access information. If you would like to check the application status for yourself you may go the link I have provided below. Create a username and password, then click on the search button in the upper left hand corner. You can search by county, city, facility name, or address.
https://genpermits.ndep.nv.gov/

We do not require a permittee to submit to us their Stormwater Pollution Prevention Plan (SWPPP). It is only necessary that they have the SWPPP on site or within a reasonable call distance should an inspector visit the site and request to see it.

Regards,
-mickie

Michele "Mickie" Reid
Staff II Associate Engineeer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov


Studies show trees live longer when they're not cut down.
Please do not print this email unless you really need to.

From: Denise Luk [mailto:denise.luk@gmail.com]
Sent: Thursday, August 28, 2014 2:53 PM
To: Michele Reid
Subject: Re: Smith Valley Dairy Construction Stormwater Permit

Hi Mickie,

It was great to connect with you the other day. Thanks for elucidating the permitting process for me. And thanks so much for the information. Can we get a copy of the stormwater runoff pollution prevention plan and the application too?

Best,

Denise

On Aug 26, 2014, at 3:33 PM, Michele Reid <mreid@ndep.nv.gov> wrote:

Denise,
It was good to speak to you today regarding the permitting of Smith Valley Dairy. As discussed, because the dairy facility does not discharge to a Waters of the U.S., they are not required to obtain any NPDES

permits. However, on their own they did apply for a NPDES construction stormwater permit. This permit is active and in compliance with fee payments. There have been two stormwater inspections conducted, 5/20 and 8/21, and no stormwater issues were identified.
Also, as we discussed, because the permit is still in draft, and the application is not complete, I am not able to provide to you the application form. Once the permit has gone out for public notice the file will be open for public review.

If you have any other questions, please don't hesitate to give me a call at any time.

Have a good evening,
-mickie

Michele "Mickie" Reid
Staff II Associate Engineeer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

<Smith Valley Dairy Stormwater Permit.JPG>

EXHIBIT 12

EXHIBIT 12

From: Denise Luk [mailto:denise.luk@gmail.com]
Sent: Wednesday, September 24, 2014 9:19 AM
To: Michele Reid
Subject: Re: Smith Valley Dairy Construction Stormwater Permit and CAFO permit application

Hi Mickie,

There are some recent developments that have us very concerned.

Since BWPC has the authority to request the SWPP, can you please do so and send me a copy? There are some real concerns with neighboring residents that the SWPP is not being followed. I'm not sure if you're aware, but it seems trucks were dumping large amounts of silage directly onto the dirt ground of the facility yesterday.

Would the silage also be covered by certain portions of the CAFO permit? If so, doesn't it make sense to send the application to us so we can make sure the facility is following it? Otherwise the facility can delay submission of the final parts of their application while just doing what they want on the property in the meantime.

Also, I don't know if you already know this, but it's my understanding that the facility has already dug their ponds. This is extremely concerning as we thought the facility hadn't yet submitted their pond designs to you. If this is still so, how can they already have lagoons built without a permit?

We also have information that the facility has built or is building the milking parlors. Again, I don't understand how the facility is able to build when they don't have a CAFO permit. Aren't the milking parlors covered by the CAFO permit as well? If they're building the ponds and milk house, seems like we should be able to see the plans in their CAFO permit application.

I know you've said you didn't think you could send us the partial CAFO permit application, but we believe it's public record as soon as BWPC receives it under the NV Public Records Act NRS 239. Without particularized evidence showing what the agency's interest is in non-disclosure, the general presumption is in favor of public access. The neighbors have no idea what is happening at this facility. We are not seeking any preliminary drafts nor opinion from the agency. We are seeking factual information submitted by the applicant.

Releasing the information now has no bearing on what, if any differences arise in the facility's completed application, as was your concern. There is a public comment period in place to account for the proposed permit once you release it. The public will be commenting on the proposed permit, not the partial application. The question is whether the applicant has a legitimate expectation of privacy for such information - not whether the information is accurate - that determines disclosure.

Thanks for helping us with this. If you'd like we can submit a formal public records request.

Thanks,

Denise

On Aug 28, 2014, at 3:07 PM, Michele Reid <mreid@ndep.nv.gov> wrote:

Denise,
All our applications are now done online, we do not have paper applications. The information I provided to you is the public access information. If you would like to check the application status for yourself you may

EXHIBIT 13

EXHIBIT 13

Michele Reid

From: Michele Reid
Sent: Thursday, September 25, 2014 1:46 PM
To: 'Denise Luk'
Cc: Cliff Lawson; Alan Tinney
Subject: RE: Smith Valley Dairy Construction Stormwater Permit and CAFO permit application

Denise,
Thank you for your questions and concerns. I do hope I can answer them to your needs.

Question:
Since BWPC has the authority to request the SWPP, can you please do so and send me a copy? There are some real concerns with neighboring residents that the SWPP is not being followed. I'm not sure if you're aware, but it seems trucks were dumping large amounts of silage directly onto the dirt ground of the facility yesterday.

Response:
The Stormwater Pollution Prevention Plan (SWPPP) you are referring to is issued for construction related stormwater run-of and is intended to ensure that erosion and sediments from construction activities are not discharged to a Waters of the United States. I will request a copy of the SWPPP be provided to BWPC for our files. The Stormwater Permit does not address the agricultural operations that may occur on that site. Yes, we have been notified by a neighbor that there have been trucks placing piles of cut corn crops, for the production of silage, onto the dairy property.

Question:
Would the silage also be covered by certain portions of the CAFO permit? If so, doesn't it make sense to send the application to us so we can make sure the facility is following it? Otherwise the facility can delay submission of the final parts of their application while just doing what they want on the property in the meantime.

Response:
NAC 445A.228 (c) states the following: 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:
(II) Mature dairy cattle (whether milkers or dry cows), 700.

In summary, the site is not currently considered a CAFO and therefore does not require permitting at this time from the Bureau of Water Pollution Control (BWPC). As stated prior, the application that has been submitted is not a complete or approved application. The facility may delay submission of the complete application, however a permit for CAFO operational discharges will not be issued until the application is complete, reviewed and approved by BWPC. Again, as long as the site does not meet the definition of a CAFO any agricultural related discharges, as described in NAC 445A.228, that occur on the site are exempt from BWPC permitting.

Question:

Also, I don't know if you already know this, but it's my understanding that the facility has already dug their ponds. This is extremely concerning as we thought the facility hadn't yet submitted their pond designs to you. If this is still so, how can they already have lagoons built without a permit?

Response:
We are aware that the facility has used fill dirt from the area where the pond will be located to build up other areas of the site. Final pond designs must meet the requirements and approval of BWPC prior to construction.

Question:
We also have information that the facility has built or is building the milking parlors. Again, I don't understand how the facility is able to build when they don't have a CAFO permit. Aren't the milking parlors covered by the CAFO permit as well? If they're building the ponds and milk house, seems like we should be able to see the plans in their CAFO permit application.

Response:
As stated above, this facility is not currently considered a CAFO. The approval of any structures built on this site has been obtained and is managed through local authorities such as the Lyon County Planning Department.

Question:
I know you've said you didn't think you could send us the partial CAFO permit application, but we believe it's public record as soon as BWPC receives it under the NV Public Records Act NRS 239. Without particularized evidence showing what the agency's interest is in non-disclosure, the general presumption is in favor of public access. The neighbors have no idea what is happening at this facility. We are not seeking any preliminary drafts nor opinion from the agency. We are seeking factual information submitted by the applicant.

Releasing the information now has no bearing on what, if any differences arise in the facility's completed application, as was your concern. There is a public comment period in place to account for the proposed permit once you release it. The public will be commenting on the proposed permit, not the partial application. The question is whether the applicant has a legitimate expectation of privacy for such information - not whether the information is accurate - that determines disclosure.

Thanks for helping us with this. If you'd like we can submit a formal public records request.

Response:
You may file a formal FOIA request with Misty Gower here at NDEP. Her contact number is 775-687-9304

I do hope this addresses your questions and concerns. If I can be of any further assistance, please don't hesitate to let me know.

Regards,

Michele "Mickie" Reid
Staff II Associate Engineeer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

EXHIBIT 14

EXHIBIT 14

Misti Gower

From: Denise Luk <denisel@sraproject.org>
Sent: Wednesday, November 05, 2014 3:24 PM
To: Misti Gower
Subject: Public Records Request
Attachments: 141101.PRR.NDEP NV.pdf; ATT00002..htm

Hi Ms. Gower,

Please find attached a public records request for Smith Valley Dairy.

Thank you,

Denise

Denise Luk, Interim National Coordinator
Socially Responsible Agricultural Project
deniseL@sraproject.org | +1 415 606 0083
SRAProject.org

November 1, 2014

SRAP
Socially Responsible Agricultural Project

Via Email Mgower@ndep.nv.gov

Misti Gower
Nevada Division of Environmental Protection
901 S. Stewart St., Ste 4001
Carson City NV 89701

Re: NEVADA PUBLIC RECORDS ACT PUBLIC RECORDS REQUEST
Smith Valley Dairy, et. al.

Dear Ms. Gower:

This is a request on behalf of the non-profit organization the Socially Responsible Agriculture Project ("SRAP") pursuant to the Nevada Public Records Act, Nevada Revised Statutes ("NRS") Chapter 239. On behalf of SRAP, I hereby request that Nevada Division of Environmental Protection (NDEP) and/or Bureau of Water Pollution Control (BWPC) provide access to, or copies of, any and all records as to the Smith Valley Dairy being constructed on 40 Hunewill Lane, Smith Valley, Lyon County, Nevada. (Hereinafter "SVD"). The facility may also be filed under the names: Vlot Revocable Trust, Vlot Brothers, Dirk Vlot, Valerie Vlot, Chase Vlot, Anthony J. Moore, or Susan J. Moore. This request encompasses records pertaining to any and all of these names.

For the reasons described below we are seeking expedited processing of this request. Specifically, there is a compelling need for expedited disclosure because construction and agricultural activity has already begun on the facility despite the lack of an approved state concentrated animal feeding operation (CAFO) permit. As you are aware, the shade structures and milking parlor have been built and manure lagoons have been dug. We have also brought it to BWPC's attention that large amounts of silage are being placed directly onto the ground. Additionally, neighboring residents have yet to receive any written notice regarding the facility and are extremely concerned about the lack of transparency about what is happening in close proximity to their homes. It is our understanding that the facility proposes to house thousands of dairy cows. Construction is continuing every day and residents are potentially facing imminent harm as a result of this large dairy CAFO. The SVD Facility has the potential to harm the economy and quality of life of surrounding communities and threatens public health, as well as the surrounding water and air quality. It is imperative that the public gains prompt access to records relating to this facility.

Records

The records requested include, but is not limited to, printed or written correspondence, books, papers, photographs, email or other machine readable electronic record, telephone messages, voice-mails or other sound recordings, notes of personal conferences, telephone conversations or

personal meetings, inter-agency or intra-agency communications, minutes, deeds, studies, reports, maps, diagrams, or drawings, land use compatibility statements and any supporting records, soil or groundwater or surface water or air sampling, testing or monitoring measurements and any supporting data, site inspection notes or reports, engineering and surveyor reports, public notices, estimations. It also includes electronic copies or backups if the originals have been destroyed, and it includes drafts of records. This request is intended to include records sent, received or generated by any NDEP/BWPC representative, division, or department.

Unless otherwise indicated, SRAP seeks records from January 1, 2012 to today.

Records Requested

Specifically, SRAP seeks the following materials:

1. All records relating to, and generated or received by NDEP/BWPC regarding any permit applications, including but not limited to permits for the commodity barns, electricity, milking parlor, shade structures, and any and all supporting documents and communications (including but not limited to notes regarding inquiries, topographical maps, diagrams, land use compatibility statements, engineering records such as maps or reports, and blueprints) for the SVD Facility that may require NDEP/BWPC approval or permitting. This requests includes any consultative or analyses or opinions NDEP/BWPC has provided, or been asked to provide, regarding the SVD Facility.

2. All records relating to, or consisting of, communications — in any format — generated by or received by NDEP/BWPC regarding the potential, or actual, evaluation, application, siting, permitting, land use compatibility, or resource preservation of a SVD Facility in Lyon County.

3. All records relating to, or consisting of, communications — in any format — generated or received by NDEP/BWPC regarding any actions undertaken, contemplated and/or rejected by any state or local agency which pertain in any way to the SVD Facility being sited, constructed, or permitted.

4. All records relating to, and generated or received by NDEP/BWPC regarding any meetings or conferences between or within NDEP/BWPC, any meetings or conferences with NDEP/BWPC and SVD Facility owners or representatives, or with any members or representatives of dairy industry trade groups or associations and any and all supporting documents and communications.

5. Any and all records relating to the current status of soil, surface water, ground water, air, or land conservation and preservation, or animal or plant species in the area within a ten (10) mile radius of where the proposed SVD Facility will be located and within a five (5) mile radius of any properties owned by SVD, Vlot Revocable Trust, Vlot Brothers, Case Vlot Cattle, Dirk Vlot, Valerie Vlot, Case Vlot, Anthony J. Moore or Susan J. Moore.

6. Any and all records relating to the potential effects of the SVD Facility on sage grouse in Nevada.

7. Any and all records relating to public funding, subsidies, or financial benefits, breaks, or incentives and the SVD Facility. This includes but is not limited to inquiries, applications, and financial awards or incentives.

8. Any and all records relating to energy consumption, infrastructure, or production at the planned SVD Facility.

This request is not meant to be exclusive of any other records that, although not specifically requested, have a reasonable relationship to the subject matter of this request. If NDEP/BWPC has destroyed or determines to withhold any documents that could be reasonably construed to be responsive to this request, SRAP asks that you indicate this fact and the reasons therefore in your response.

SRAP was previously informed in writing by a BWPC representative of the agency's refusal to disclose public records upon the belief that SVD's partially submitted permit application is not public record. We are not aware of any law that supports this contention. As discussed below, all government records are publicly accessible with exceptions construed narrowly. The burden is on the government agency to show by a preponderance of the evidence that the information requested is confidential or otherwise non-disclosable.

Records Request Analysis

Nevada's Public Records Act (NPRA or Act) was enacted to ensure that government documents are available to the public.

Nevada has a longstanding policy in favor of access to public records. A 1911 law originally granted Nevada citizens the statutory right "empowering all persons to copy or make abstracts or memoranda of all books and records of state and county officers..." Revised Laws of Nevada, 1911, p. 290.

The statement of current legislative policy regarding public records, NRS 239.001(1), provides that the public records law is "to foster democratic principles." The provisions of the NPRA are designed to promote government transparency and accountability. In 2007, in order to better effectuate these purposes, the Legislature amended the NPRA to provide that its provisions must be liberally construed to maximize the public's right of access. NRS 239.001(1)-(2); 2007 Nev. Stat., ch. 435, § 2, at 2061. Conversely, any limitations or restrictions on the public's right of access must be narrowly construed. NRS 239.001(3); 2007 Nev. Stat., ch. 435, § 2, at 2061.

The NDEP and BWPC are "government entities" as defined by statute and are hence subject to the terms of the Act and the requested materials are clearly "public records" as that term is used in the Act. *See* NRS 239.005(5). State statute NRS 239.010(1) provides:

> Except as otherwise provided ... and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records.

Thus, all the records sought in this request fall under public records addressed by the NPRA.

All government records are public documents available for inspection unless otherwise explicitly made confidential by statute or by a balancing of public interests against privacy or law enforcement justification for nondisclosure.

First, we begin with the presumption that all government-generated records are open to disclosure. *See Reno Newspapers, Inc. v. Gibbons,* 266 P.3d 623, 127 Nev. Adv. Rep. 79 (Nev. 2011); *Reno Newspapers, Inc. v. Haley*, 234 P.3d 922, 923, 126 Nev. Adv. Rep. 23 (Nev.2010). That presumption of disclosure stands unless the legislature has "expressly and unequivocally created an exemption or exception by statute." *Haley,* 234 P.3d at 923, 126 Nev. at . Here, the records requested are generated by the government and are as such public record. To our knowledge, there are no express and unequivocal exceptions or exemptions pertaining to this request.

The clear language of the Act itself, the rulings of Nevada Supreme Court as well as the Court of Appeals demonstrate clearly that if a state entity withholds records, it bears the burden of proving, by a preponderance of the evidence, that the records are confidential. *See, e.g.*, NRS 239.0113; 2007 Nev. Stat., ch. 435, § 5, at 2062; *DR Partners v. Board of County Comm'rs*, 6 P.3d 465, 468, 2000, 116 Nev. 616, 621 (Nev. 2000)(Records not protected under deliberative process privilege). In the event that public records contain confidential information, the Legislature has provided that the records should be redacted and the remaining document open to inspection. NRS 239.010(3); *Haley*, 234 P.3d at 928, 126 Nev. at .

Next, in the absence of a statutory provision that explicitly declares a record to be confidential, any limitations on disclosure not only must be narrowly construed, they must also be based upon a broad balancing of the interests involved. *Donrey of Nevada v. Bradshaw,* 798 P.2d 144, 147, 106 Nev. 630, 635 (Nev. 1990); *DR Partners*, 6 P.3d at 468, 116 Nev. at 622. The state entity bears the burden to prove that its interest in nondisclosure clearly outweighs the public's interest in access. *Haley*, 234 P.3d at 927, 126 Nev. at . In balancing the interests, the scales must reflect the *fundamental right* of a citizen to have access to the public records as contrasted with the *incidental right* of the agency to be free from unreasonable interference. *DR Partners*, 116 Nev. at 621, 6 P.3d at 468 (emphasis added). Here, the facts surrounding the planning, development, and construction of the SVD Facility are matters of public concern to neighboring communities. Similarly, the public has a fundamental right to know about the workings of local government and the role NDEP/BWPC plays in regulating and enforcing the facility.

Finally, the agency has the burden to prove its interest in nondisclosure "clearly" outweighs the public's right to access, and the agency cannot meet this burden with hypothetical concerns *Gibbons,* 266 P.3d at 628, 127 Nev. Adv. Rep. at citing *Haley,* 234 P.3d at 927, 126 Nev. at . (Agency presented no evidence to support claim that releasing records would increase crime or expose permit holders or public to harm). To aid in the balancing process, the government agen-

cy must show with "particularized evidence" that any interest in non-disclosure outweighs the general presumption in favor of public access. *DR Partners*, 6 P.3d at 468, 116 Nev. at 622. Moreover, "a string of citations to a boilerplate declaration of confidentiality" does not satisfy the agency's requirements under the NPRA. Internal agency policies that do not have the force and effect of law do not constitute specific authority justifying withholding the requested record. *Gibbons*, 266 P.3d at 631, 127 Nev. Adv. Rep. at . In balancing, a construction favoring inspection will be applied, and doubtful cases will be resolved in favor of public inspection. Nevada Attorney General's Opinion (AGO) 89-1 (2-6-1989).

If you plan to deny our request because you believe the public record, or a part thereof, is confidential, please provide in writing, pursuant to NRS 239.0107(1)(d):

(1) Notice of that fact; and

(2) A citation to the specific statute or other legal authority that makes the public book or record, or a part thereof, confidential.

The notice should include a generally include a log with factual descriptions of each record withheld and a specific explanation for nondisclosure. *Gibbons*, 266 P.3d at 631, 127 Nev. Adv. Rep. at .

Accordingly, we ask that you remain mindful of your obligation to substantiate any decision to restrict public access to the requested information and thoroughly explain any such determination you might make. Such statements will be helpful in deciding whether to appeal an adverse determination and in formulating arguments in the event an appeal is taken. Your written justification might also help to avoid unnecessary litigation.

SRAP reminds NDEP/BWPC that disclosure is favored. Here, it is clearly in the public interest to disclose the information requested about the SVD Facility, particularly because the facility is already being constructed and the neighbors received no notice prior to construction activity.

Additionally, state code regarding water pollution discharge permits specifically provides: "The Director shall ensure that any application, reporting or related forms, including the draft permits prepared pursuant to subsection 1 of NAC 445A.233 … are available to the public for inspection and copying." NAC 445A.237(1). The rule goes on to require prompt compliance with requests:

> The Director shall provide facilities for the inspection of information relating to application, reporting and permit forms and shall ensure that state employees honor requests for such inspection promptly without undue restrictions. The Director shall either:
>
> (a) Ensure that copying machines are available for a reasonable fee; or
>
> (b) Otherwise provide for copying services so that requests for copies of nonconfidential documents may be honored promptly.

NAC 445A.237(4).

Fee Waiver request

SRAP also requests that you waive any fees associated with your response to this request as permitted by NRS 239.052(2). Although Nevada's Public Records Law does not contain provi-

sions governing when fee waivers are appropriate, SRAP would qualify for a fee waiver under the federal Freedom of Information Act (FOIA). *See* 5 USC § 552 *et seq*. The requested records bear directly on identifiable operations and activities of NDEP/BWPC, will contribute significantly to a broad public understanding of the agencies' regulation of the SVD Facility and will not serve any commercial interest on the part of SRAP. We think the Federal law is instructive here regarding SRAP's public records requests from the State and we request NDEP/BWPC consider granting a fee waiver in this situation should fees be incurred.

Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations or activities of the government. NDEP/BWPC implements, administers, and enforces local regulations relating to SVD that has the potential to harm the economy and quality of life of surrounding communities, public health, as well as the environment and natural resources. SRAP possesses the ability to disseminate information to the public about local government involvement with such projects as well as the effects of such projects on the community.

SRAP is a national, 501(c)(3) non-profit organization that educates the public about the devastating effects of concentrated animal feeding operations, also known as "factory farms," while working directly with the communities most heavily impacted by them. Through education, advocacy, and community organizing, SRAP empowers rural communities to protect themselves from CAFOs and provides tangible guidance and assistance to communities seeking to develop healthy, and environmentally and financially sustainable alternatives to industrialized livestock production. Information from government organizations is essential for SRAP to carry out its mission.

SRAP seeks this information in order to specifically inform itself and the public regarding a large dairy CAFO being sited and/or permitted in Smith Valley, NV, and to inform the public of the government's process in reviewing and assessing the SVD Facility. Similarly, SRAP is interested in better illuminating the context in which NDEP/BWPC acts when evaluates and analyzes a large dairy CAFO, and whether state and local ordinances adequately protect the public from potential health, community lifestyle, environmental, and economic harms CAFOs are known to cause across the United States. All responsive documents produced by NDEP/BWPC will be reviewed and their information publicly disseminated as appropriate to these ends.

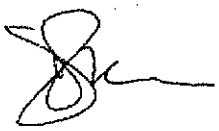
SRAP has no commercial, trade, or profit interest in the material requested. SRAP will not be paid for, or receive other commercial benefits from the publication or dissemination of the material requested. The requested material will be disseminated solely for the purpose of informing and educating the public and will not be used for commercial use or gain.

Per NRS 239.0107, please respond in writing not later than the end of the fifth business day after your receipt of this letter of your final decision to either provide access or deny access to the records requested. At that time, per statute, we expect NDEP/BWPC will allow us to inspect the record or, if you are not able to make the record available by the end of the fifth business day, state in writing when the record will be available for our review. If the record is not in the custody of the agency, please provide us with written notice of that fact and provide the name and address of the government agency that has custody of the record, if known.

Please be advised that if NDEP/BWPC elects to deny public access to these records absent sound basis in law, we reserve the right to apply to the district court for an order compelling disclosure under NRS 239.011 as well as the right to pursue action under NRS 239.320 if appropriate. Under NRS 239.011, the requestor is entitled to recover costs and reasonable attorney's fees in pursuing the court action.

If we may be of any assistance in your response to this request, please do not hesitate to contact me. If you anticipate that there will be any charge associated with the production of the requested documents, please inform us prior to incurring such an expense. Pursuant to NRS 293.010(4) SRAP prefers to receive records electronically, but please feel free to contact me to discuss transmitting responsive records, and/or to arrange a reasonable time to review and inspect and copy responsive records.

Sincerely,



Denise Luk
Interim National Coordinator,
Socially Responsible Agriculture Project
(415) 606-0083
denisel@sraproject.org
P.O. Box 1390
Molalla, OR 97038

EXHIBIT 15

EXHIBIT 15

Bonnie Hartley

From: Bonnie Hartley
Sent: Monday, November 17, 2014 9:37 AM
To: 'Denise Luk'
Subject: RE: Public Records Request

Ok, sounds good.

Bonnie

From: Denise Luk [mailto:denisel@sraproject.org]
Sent: Friday, November 14, 2014 2:42 PM
To: Bonnie Hartley
Subject: Re: Public Records Request

Ok, please give all the records you have to Ron at Nevada Blue. We will get copies of everything.

Denise

Denise Luk, Interim National Coordinator
Socially Responsible Agricultural Project
deniseL@sraproject.org | +1 415 606 0083
SRAProject.org

> On Nov 13, 2014, at 4:37 PM, Denise Luk <denisel@sraproject.org> wrote:
>
> Thanks, Bonnie. I will ask Ron how much it costs to copy the CDs and get back to you. We will likely want copies of them and the bound report as well.
>
> thanks,
>
> Denise
>
> ---
>
> **Denise Luk,** Interim National Coordinator
> **Socially Responsible Agricultural Project**
> deniseL@sraproject.org | +1 415 606 0083
> SRAProject.org

On Nov 13, 2014, at 11:14 AM, Bonnie Hartley <bhartley@ndep.nv.gov> wrote:

Hi Denise,

So it looks like there are actually two CDs. The first has a map of the pond details, offsite drainage profiles, septic approval letter, management plan for nuisance control, and a letter from AGPROfessionals to NDEP addressing specific comments from Mark Kaminski. The second CD contains the groundwater discharge permit application, engineering documents, the nutrient management and operations/maintenance plan, and NMP appendix A-I. The bound report is for the Preliminary Geotechnical Investigation.

Upon further review of the file it looks like everything on the CDs is also in the file as a hard copy except for, perhaps, the letter from AGPROfessionals to NDEP.

Bonnie Hartley
Administrative Assistant IV
NDEP - Water Pollution Control
P: (775) 687-9437
F: (775) 687-4684

From: Denise Luk [mailto:denisel@sraproject.org]
Sent: Wednesday, November 12, 2014 1:21 PM
To: Bonnie Hartley
Subject: Re: Public Records Request

Hi Bonnie,

Thank you for your response. I have contacted Nevada Blue and set up an account with them. Before we proceed with copying the bound report and the CD, can you please give me some idea of what they contain?

Best,

Denise

Denise Luk, Interim National Coordinator
Socially Responsible Agricultural Project
deniseL@sraproject.org | +1 415 606 0083
SRAProject.org

On Nov 12, 2014, at 10:24 AM, Bonnie Hartley <bhartley@ndep.nv.gov> wrote:

Good Morning Ms. Luk,

My name is Bonnie Hartley and I work for the Bureau of Water Pollution Control which is part of the Nevada Division of Environmental Protection. Our Bureau has, to the best of our knowledge, searched all of our databases and have located a few records on file for Smith Valley Dairy. These records consist of a Small Onsite Sewage Disposal System permit, a General Construction Stormwater permit, and a Groundwater Discharge permit (please note that this permit is currently in draft mode).

Per our Division Administrative Manual, section 2706.0, sub section 4, "At the Division's discretion, copying jobs may be taken to a commercial copier with arrangements for the commercial copier to pick-up and return records and to directly bill the requestor of the copies." Due to the fact that there are more than 50 pages to copy, the files will need to be sent to a commercial copier. Most people use Nevada Blue but you can use any copying business you'd like.

In order to obtain copies of these files you will need to set up an account with a commercial copier. You will then need to notify our office that this has been completed so we may contact the commercial copier when the files are ready for pick-up. I would estimate that there are about 750 pages to be copied. These consist of both colored and black and white 8.5 x 11 sheets of paper, some of which may be front and back copies, there is also a bound report and a CD. Not included in the 750 page estimate are some large maps (24in x 36in).

Also, just as an FYI, Lynn Henning, whom I believe is from SRAP as well has also requested files pertaining to Smith Valley Dairy. We are more than happy to provide these files to her but we thought it common courtesy to inform you of the duplicate request in order to reduce the copying costs for SRAP.

Please let me know if you have any questions or concerns.

Sincerely,

Bonnie Hartley
Administrative Assistant IV
NDEP - Water Pollution Control
P: (775) 687-9437
F: (775) 687-4684

EXHIBIT 16

EXHIBIT 16

[redacted]

BUREAU OF WATER POLLUTION CONTROL

	DATE	NAME (Printed)	ORGANIZATION / COMPANY	VISITING	MEETING (Y/N)
1	1-16-14	Phil Tousignant	Kleinfelder	✓	N
2	1-~~17~~-14	MATT PERRY	WDS	✓	Y
3	1-21-14	Mike Hardy	Lumos & Asso.	✓	
4	1/22/14	Lou Hoffman	James Hardie		
5	1-22-14	Nick Tzourtzoulas	James Hardie	✓	Y
6	1-24-14	LESLIE BURNSIDE	WOODRODGERS	✓	
7	1-24-14	Skeet Sellers	TRIC		✓
8	1/24/14	Britton B Vinco Griffith	TRI GID		✓
9	1/27/14	Kevin J. Roukey	Three Parameters Plus Inc.	✓	
10	1/27/14	MARSHALL TODD	SMITH VALLEY RESIDENT	✓	
11	1/28/14	Shane Johnson	Watrton	✓	
12	1-28/14	Shyla Lemon	CCPW	✓	~~N~~ Y
13	1-28	Robb Fellows	CCPW	✓	Y
14	1-28	JIM WIGGINS	EMPIRE RANCH GOLF COURSE	✓	
15	1-28	David Hillis	City of Fernley	✓	
16	1-28	Brian Giroux	HGA	✓	N
17	1-31	Mike Caltagirone	TU	✓	Y
18	2-5	Zach Pak	First Solar	✓	Y
19	2-5	Linda Bullen	Lionel Sawyer	✓	yes
20	2-5	DON SWEENEY	ROUND MTN		YES
21	2-10	James Murphy & ~~Steve Cooke~~	NDOT		Y
22	2-10-14	Steve Cooke	NDOT		Y
23	2-10-14	Jim Haddon	Haddon Engr.	✓	
24		Sergio Gonzalez	Hawthorne Utilities	✓	
25	2-12-14	Mike Starr	STARRS	✓	✓
26	2-12-14	Gary Midkiff	MIDKIFF		
27	2-13-14	Rob Anderson			
28	2-25-14	Forrest Fox			
29	"	Lynn Zonge	RCI	✓	N
30	2/26	WMTiL	RCI	✓	✓

[redacted]

BUREAU OF WATER POLLUTION CONTROL

	DATE	NAME (Printed)	ORGANIZATION / COMPANY	VISITING	MEETING (Y/N)
1	03/04/14	Kevin M. [illegible]	[illegible] Consulting	[illegible]	Y
2	03/05/14	John Flansburg	City of Reno	Timmy	Y
3	3/5/14	Neil Krutz	" " Sparks	Timmy	Y
4	3/6/14	Mike Floyd		~~Mickey~~	
5	3/6/14	Robert Lumbard		Mickey	
6	3/6/14	Marshall Todd		Mickey	
7	3/10/14	Albert Mulder	NRCS	Mickie	Y
8	3/11/14	Martin Webb	MWW Const	B. Timmy	N
9	3/12/2014	Kirk [illegible]	Granite		
10	3/ / 14	Gerry Simmons		Mickie	
11	3/13/14	Brent Farr	Farr west	Mylinh	Y
12	3/13/14	Zack Walter	Farr West	Mylinh	Y
13	3/14/14	Eric Anderson	Bighorn Consulting	Jason	Y
14	3/14	Dale Dunnet	Miles Construction	Jason	Y
15	3/19	Brian Granty	McGinley	Fermin	Y
16	3/19	Tony Dimpel	McGinley	Fermin	Y
17	3/19	Kristin Roaldson	Resource Concepts, Inc.	McGoff	Y
18	"	Jeremy Drew	" " "	"	
19	3-21	Steve Bohreck	Questions on Carson River		
20	3-24	Kirk [illegible]	Granite	Lussaline	
21	3-24	Jim Meyer	self -		
22	3-25	Ulrich Schroeder	ICM Corp.	R. Land.	Y
23	3-25	Susan Martin	ICM Corp	R. Land	Y
24	3/27	Michelle Cuellar	Marigold Mine	K. Greene	
25	3/28	Rob Bidart	Stantec	R. Warren	Y
26	3/28.	Ted Brown	Teds Brown PE	N. Brothers	N
27	4/4	Roy Hibdon	Ken Green	Ken Green	Y
28	4/8	Bryan Stankiewicz	Ened Green Power	N. Brothers	N
29	4/9	Brian Bass	Legacy Team Env	S. Hult	N
30	4/9	Ron Anderson	[illegible]	A. Timmy	

BUREAU OF WATER POLLUTION CONTROL

	DATE	NAME (Printed)	ORGANIZATION / COMPANY	VISITING	MEETING (Y/N)
1	4/10/14	Jeanne Smithson	Nevada Copper	Look at files	N
2	4/10/14	Merlin Walt	MNW	Branna	N
3	4/16/14	Bill Bennett	NDSL	Earl	Y
4	4/16	Brian Grow	MGA	Maez	✓
5	4/16	Rick Peterson	STB		
6	4/18/14	Steve Cooke	NDOT		
7	4/21/14	Ron Anderson	Anderson & Associates / [illegible]	Peter	
8	4/22/14	Jay Lazarus	Glorieta GeoScience	Mike	Yes
9	4/22/14	Dave Gow	"		
10	~~4/24/14~~	Jeff Mills	CCWRD	"	Yes
11	4/24/14	Brian Giroux	MGA	Fernu	Y
12		Ryan Bird	City of Reno		
13	4-28-14	Salomon	Wolf Run G C	—	N
14	4/29/14	Jim Wiggins	Empire Ranch Golf Course	—	N
15	4/30/14	Marshall Todd	G-C	Mikey	Y
16	5/2/14	Nicole Zdorsky	Gordon Consulting, Inc.	Nick	Y
17	5/2	Mimi Thayer	Douglas Co	Cliff L.	Y
18	5/2	Barbra Resnick	" "		
19	5/5	Wendy Barnett	UICN	Cliff L	
20		Teresa Valentine	UICN		
21		Jose Nunez	UICN		
22	5/5	David Bordenkircher	EP Minerals	Plaskett	
23	5/5	Lita Humphreys	" "		
24	5/5	Pat Lahlum	SGT, LLC	Joe	
25	5/6	Tony Dimpel	McGinley & Associates	Cliff	Y
26	5/6	J McGheeSY	NGA	"	
27	5/6/14	Patrick Rueckert	Granite Construction	Peter	Y
28	↓	Mark McIntosh	" "	↓	↓
29		Peter Allen	" "		
30		Matt Franz	" "		

[redacted]

BUREAU OF WATER POLLUTION CONTROL

	DATE	NAME (Printed)	ORGANIZATION / COMPANY	VISITING	MEETING (Y/N)
1	11/6/14	MARSHALL TODD	YERINGTON RESIDENT	M. REID	
2	11/6/14	Dawn Clevenger	Ormat Nevada	Nick	Yes.
3	11/14/14	SHAYNE GOTTSCHALK	XEROX SVC.		
4	11/17	ERIC LATTIN	BLACK DOLPHIN	GREENE	YES
5	11/19	Steve Grosz	Newmont	C. Lawson	Yes
6	11/19	DAN ANDERSON	NEWMONT	C Lawson	Yes
7	11/20	RON PARKER NV BLUE	NEVADA BLUE	3003	NO
8	11/20	KRISTA JENKINS	DCMAD	JOE	Y
9	11/20	SHELLEY EDWARDS	DCMAD	Jo	✓
10	11/25	Kristin Roaldson	RCI	Chris	YES
11	11/26	RON PARKER	NEVADA BLUE FOR SRA PROJECT	WPC	NO
12	12/3	Bryan Permann	Geo-Nevada	WPC	
13	12/4	Mirinda Jones	Veris Gold	WPC -	C. Lawson - No
14	12/4	Merlin Waite	MW Const (Margie)	Margie	N
15	12/5	RANDY MARK	BROADBENT & ASSOCIATES INC.	S. McGoff	SORT OF... YES
16	12/8	Carol McLeod	Save Our Smith Valley	M Reid	Said hi sent me upstairs
17	12/10	Felicia Nichols		Cliff Lawson	yes
18	12/14	DIEGO VILLAGOMEZ		Lawson	YES
19	12/16	Jill Sutherland	RCI	Kim	Yes
20	12/16	DAN MYERS	GOLD DIGGERS SALOON	C LAWSON	
21	12/17	Jill Sutherland	RCI	Kim	Yes
22	12/18	Jill Sutherland	RCI	Kim	N
23	12/18/14	GEORGE HAGGAN	McGINLEY & ASSOCIATES		N
24	12/19/14	WILLIAM AVERY	Dept of water pollution control	C. Lawson	Y
25	1/15/15	Kristin Roaldson	RCI	Steve	Y
26	"	Jeremy Drew	"	"	"
27	"	Jill Sutherland	"	"	"
28	1/16/15	Brian George +1	McGinley	Mickie	Y
29	1/16/15	TOM HALEN	AGPRO	MACS	Y
30	"				

[redacted]

BUREAU OF WATER POLLUTION CONTROL

	DATE	NAME (Printed)	ORGANIZATION / COMPANY	VISITING	MEETING (Y/N)
1	1/20/15	Linda Peterson	SPB		
2	"	Daniel Peterson	SPB		
3	1/20/15	Jason Fermo	RCI		
4	1/26/15	Mike W & Jimmy	Lyon County		
5	1/26/15	~~[illegible]~~ KEVIN HASKEW	SURVEY		
6	1/27/15	RANDY MARK	BROADBENT & ASSOCIATES INC.	[illegible]	NO
7	1-28-15	[illegible]	WOLF RUN GC	N/A	NO
8	1-28-15	Garth Oksol	RTC	Rob W.	Yes
9	1/30/15	RANDY MARK	BROADBENT & ASSOCIATES	STEVE	YES
10	1-30/15	Carol McLeod	SOS Smith Valley	MICKE	
11	1/30/15	Jamie Myers	DRI		
12	2-5	DWAYNE SMITH	WASHOE COUNTY	JOE M	
13	2-6	JOHN JONES	NVRWA		
14	2/13	KENT HAMMONDS	HAMMONDS CONSULTING	BJ	Yes
15	2/17	RANDY MARK	BROADBENT & ASSOCIATES INC	STEVE	NO
16	2/17	~~[illegible]~~			
17	2/24	Bob Pickman	NDOT	CLIFF	Y
18	2/24	Darren Reed	" "	" "	Y
19	2/24	CHRIS SEGA	TNC	Lasseline	Y
20	"	MICKEY HAZLEWOOD	TNC	"	Y
21	2/24	Linda Peterson	SPB	Sylvia	Y
22	2/24	Daniel Peterson	SPB	"	Y
23	2/26	Lynn Zink	RCI	Kim B	N
24	3-2	PAUL VON	MSC		
25	3/2	Carmen Augusta	NVB	[illegible]	
26	3/2	Linda Bullen	Bullen Law	P. Lasseline	Y
27	3/2	Zack Park	First Solar	P. Lasseline	Y
28	3/3	Jay Ahrens	Citizen	Peter	Y
29	3/5	Mark Herrmann	SEMP	Mikie	N
30	3/5	Greg Schrew	Town of R/M	MARK	Y
31	3/5	Dan Swan	TRL	Mark	Y
32	3/5	Jay Dixon	Town of Round Mtn	Mark K.	Y

EXHIBIT 17

EXHIBIT 17

Michele Reid

From: Michele Reid
Sent: Monday, January 05, 2015 8:24 AM
To: 'Denise Luk'
Subject: RE: Missing Documents - Public Records Request
Attachments: DOC138.pdf

Denise,
I just went through the file and found the following documents that were double sided and may not have been copied as such by the copying service. If there is something else that appears to be missing, just give me some additional detail and I will get it your way as quickly as I can.

-mickie

Michele "Mickie" Reid
Staff II Associate Engineer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

-----Original Message-----
From: Denise Luk [mailto:denisel@sraproject.org]
Sent: Saturday, January 03, 2015 2:22 PM
To: Michele Reid
Subject: Missing Documents - Public Records Request

Hi Mickie,

It seems like only the odd pages were copied from the permit application. Perhaps it was two sided and the copying service only copied one side? Please send the even pages of the applications ASAP.

Thanks

--Denise

Denise S. Luk
denisel@sraproject.org
+1-415-606-0083

Sent from my mobile

EXHIBIT 18

EXHIBIT 18

Michele Reid

From: kjm2@aol.com
Sent: Friday, January 09, 2015 5:34 AM
To: Michele Reid
Cc: denisel@sraproject.org; csmcleodphs@yahoo.com
Subject: Re: Smith Valley Dairy NMP revisions

Ms. Reid -- thank you for checking on that. k

-----Original Message-----
From: Michele Reid <mreid@ndep.nv.gov>
To: 'kjm2@aol.com' <kjm2@aol.com>
Cc: Denise Luk (denisel@sraproject.org) <denisel@sraproject.org>; Carol McLeod (csmcleodphs@yahoo.com) <csmcleodphs@yahoo.com>
Sent: Thu, Jan 8, 2015 2:23 pm
Subject: FW: Smith Valley Dairy NMP revisions

Kathy,
As discussed after the meeting last night; I contacted AGPros first thing this morning concerning the pagination issue. Please see below their email along with the attached cover letter and updated NMP pages. It appears that the document is complete as posted on our website. Once I receive the newly numbered electronic copy, I will replace the one posted on our webpage. Please let me know if you require anything further.

Respectfully,
-mickie

Michele "Mickie" Reid
Staff II Associate Engineer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

From: Janine Baratta [mailto:jbaratta@agpros.com]
Sent: Thursday, January 08, 2015 11:57 AM
To: Michele Reid
Cc: Patricia Spaine; Tom Haren; Tim Naylor
Subject: Smith Valley Dairy NMP revisions

Hi Mickie,

Attached is a cover letter and revised pages of the nutrient management plan for Smith Valley Dairy in Wellington, Lyons County, NV. The complete permit application for a groundwater discharge permit, with the new pages inserted, was too large to email. We will send this to you on a CD, as I understand that you are unable to download files from a virtual server.

Please let Patricia Spaine or me know if you have any questions.

Regards,

Janine Baratta
Agronomist

EXHIBIT 19

EXHIBIT 19

Michele Reid

Stormwater E-mail

From: Michele Reid
Sent: Thursday, August 28, 2014 3:08 PM
To: 'Denise Luk'
Subject: RE: Smith Valley Dairy Construction Stormwater Permit

Denise,
All our applications are now done online, we do not have paper applications. The information I provided to you is the public access information. If you would like to check the application status for yourself you may go the link I have provided below. Create a username and password, then click on the search button in the upper left hand corner. You can search by county, city, facility name, or address.
https://genpermits.ndep.nv.gov/

We do not require a permittee to submit to us their Stormwater Pollution Prevention Plan (SWPPP). It is only necessary that they have the SWPPP on site or within a reasonable call distance should an inspector visit the site and request to see it.

Regards,
-mickie

Michele "Mickie" Reid
Staff II Associate Engineeer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

From: Denise Luk [mailto:denise.luk@gmail.com]
Sent: Thursday, August 28, 2014 2:53 PM
To: Michele Reid
Subject: Re: Smith Valley Dairy Construction Stormwater Permit

Hi Mickie,

It was great to connect with you the other day. Thanks for elucidating the permitting process for me. And thanks so much for the information. Can we get a copy of the stormwater runoff pollution prevention plan and the application too?

Best,

Denise

On Aug 26, 2014, at 3:33 PM, Michele Reid <mreid@ndep.nv.gov> wrote:

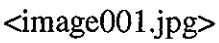
Denise,
It was good to speak to you today regarding the permitting of Smith Valley Dairy. As discussed, because the dairy facility does not discharge to a Waters of the U.S., they are not required to obtain any NPDES

permits. However, on their own they did apply for a NPDES construction stormwater permit. This permit is active and in compliance with fee payments. There have been two stormwater inspections conducted, 5/20 and 8/21, and no stormwater issues were identified.
Also, as we discussed, because the permit is still in draft, and the application is not complete, I am not able to provide to you the application form. Once the permit has gone out for public notice the file will be open for public review.

If you have any other questions, please don't hesitate to give me a call at any time.

Have a good evening,
-mickie

Michele "Mickie" Reid
Staff II Associate Engineeer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov



<Smith Valley Dairy Stormwater Permit.JPG>

EXHIBIT 20

EXHIBIT 20

all portions of the site for which the permittee is an operator. The SWPPP shall be prepared and maintained on the permittee's project site for these discharges.

B. NOI Electronic Filing Requirements. NOI forms must be completed on-line at NDEP's website at the following address: ***http://ndep.nv.gov/bwpc/storm_cont03.htm.*** The applicant will be required to provide the following information to complete the NOI and submit it to NDEP:

1. Owner/operator (applicant) information including the name, address, city, state, zip code and phone number of both the owner and operator;
2. Project/site information including the project name, project address/location, city, state, zip code, latitude, longitude, at least one Assessor's Parcel Number ("APN") associated with the project and the county;
3. Name of the receiving water for any stormwater discharge;
4. The estimated construction start date;
5. The estimated completion date of construction;
6. An estimate of the area to be disturbed to the nearest acre;
7. An estimate of the likelihood of a stormwater discharge;
8. The address of the location where the SWPPP can be viewed including the city, state, zip code and phone number. *Note: It is not necessary to submit a copy of the SWPPP to NDEP.*

C. Submitting the Completed NOI. After completing the NOI and filing it electronically with NDEP, the applicant must perform the following steps within thirty (30) days to complete the NOI application:

1. Print out a copy of the NDEP confirmation page and sign below the certification statement. The certification statement and the person responsible for signing the NOI is discussed in Part V of this permit;
2. Write a check to "NDEP" for the required permit fees; and
3. Mail the check and confirmation page with the original signature to:

   Stormwater Coordinator
   Bureau of Water Pollution Control
   Nevada Division of Environmental Protection
   901 S. Stewart Street, Suite 4001
   Carson City NV 89701

D. Continuation of Coverage in the General Permit. To continue to be included in this general permit, holders of expired general permit NVR100000 must submit a renewal NOI to NDEP within ninety (90) days of the effective date of this permit to remain included under the original NOI. The permittee must verify that the information on the renewal NOI is valid and accurate before submitting the renewal NOI for continued inclusion. No additional filing fee is required to file this renewal NOI. In addition, the previously supplied permit identification number (CSW-xxxx) must be included with the submittal.

EXHIBIT 21

EXHIBIT 21

Michele Reid

From: Michele Reid
Sent: Wednesday, December 31, 2014 12:44 PM
To: 'Denise Luk'
Subject: RE: Attachments to Email Correspondence
Attachments: Smith Valley SWPPP.pdf

Stormwater SWPPP provided

Denise,
As promised, here is the electronic copy of the SWPPP for the Smith Valley Dairy construction permit.

Have a Happy New Year!
-mickie

Michele "Mickie" Reid
Staff II Associate Engineer
Bureau of Water Pollution Control
P: 775.687.9434 F: 775.687.4684
Email: mreid@ndep.nv.gov

From: Denise Luk [mailto:denisel@sraproject.org]
Sent: Wednesday, December 31, 2014 12:00 PM
To: Michele Reid
Subject: Re: Attachments to Email Correspondence

Thanks, Mickie. Electronic copies are fine.

--Denise

Denise S. Luk
denisel@sraproject.org
+1-415-606-0083

Sent from my mobile

On Dec 31, 2014, at 1:56 PM, Michele Reid <mreid@ndep.nv.gov> wrote:

> Denise,
> Just wanted to touch base with you and let you know that I am expecting the SWPPP to be received in our offices at any time. As soon as I have it I will scan it and get it out to you electronically. Would you also like a hard copy of the document mailed to you?
>
> -mickie
>
> Michele "Mickie" Reid
> Staff II Associate Engineer
> Bureau of Water Pollution Control
> P: 775.687.9434 F: 775.687.4684

Email: mreid@ndep.nv.gov

<image001.jpg>

From: Denise Luk [mailto:denisel@sraproject.org]
Sent: Monday, December 29, 2014 1:22 PM
To: Michele Reid
Subject: Re: Attachments to Email Correspondence

Great, thanks. I thought you had requested it from the facility a few months ago when we first talked about it.

Look forward to getting it.

Denise

Denise Luk, Interim National Coordinator
Socially Responsible Agricultural Project
deniseL@sraproject.org | +1 415 606 0083
SRAProject.org

> On Dec 29, 2014, at 1:19 PM, Michele Reid <mreid@ndep.nv.gov> wrote:
>
> Denise,
> One of our inspectors is on their way out to the site to see if they can get a copy of the SWPPP. As a practice, we do not require the contractors to turn in hard copies for our files, only that they maintain the plan on site for our review.
>
> As soon as I have something in my hands I will get it over to you.
>
> Regards,
> -mickie
>
> Michele "Mickie" Reid
> Staff II Associate Engineer
> Bureau of Water Pollution Control
> P: 775.687.9434 F: 775.687.4684
> Email: mreid@ndep.nv.gov
>
> <image001.jpg>
>
> ---
>
> **From:** Denise Luk [mailto:denisel@sraproject.org]
> **Sent:** Saturday, December 27, 2014 12:32 PM

To: Michele Reid
Cc: Danielle Diamond
Subject: Attachments to Email Correspondence

Hi Mickie,

We would like to see the facility's Stormwater Pollution Prevention Plan which since it is also public record. We understand that the CAFO is to keep the SWPPP on site. Will you request it from the facility so that we may have access to it?

Thanks for your timely attention to this. We believe the information is pertinent to the public comment on the proposed draft permit which ends in two weeks.

Thank you,

Denise

Denise Luk, Interim National Coordinator
Socially Responsible Agricultural Project
deniseL@sraproject.org | +1 415 606 0083
SRAProject.org

EXHIBIT 22

EXHIBIT 22

NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION

STATE OF NEVADA
Department of Conservation & Natural Resources
Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

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 Wellinton, 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 Lumbard 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 copies 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. <u>The following people commented with concern for the mortality management plan.</u>

Gary Simmons of Wellington, NV
Robert Lumbard of Wellington, NV
Stephanie Doane of Wellington, NV
John T. "Tom" Spencer of Wellington, NV
Kim Gattuso of Smith Valley, NV
Dave Cosner of Smith Valley, NV
Carol McLeod, 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. <u>The following people commented with concern for silage storage and leachate.</u>

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. <u>The following people commented with concern for manure production and storage.</u>

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 Lumbard 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 Lumbard 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. <u>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.</u>

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. <u>The following people commented with concern for pond design and pond monitoring requirements.</u>

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. <u>The following people commented with concern for land application of manure and process water.</u>

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. <u>The following people submitted comments regarding groundwater monitoring well locations and sampling requirements.</u>

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. <u>The following people submitted comments in regards to lining of the penned area.</u>

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. <u>The following people submitted comments in regards to the facility location details.</u>

Robert Lumbard 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. <u>The following person submitted comments in regards to air quality and water quality in the valley.</u>

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. <u>The following person submitted comments in regards to an Environmental Impact Studies.</u>

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. <u>The following person submitted comments in regards to a discrepancy between the permit application and NMP.</u>

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. <u>The following person submitted comments in regards to the use of the wording sewage sludge in the permit.</u>

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. <u>The following person submitted a comments in regards to the wells within a one mile radius.</u>

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. <u>The following people submitted comments on a petition to oppose Smith Valley Dairy.</u>

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 Groswird
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. <u>The following people submitted comments in support of both the Smith Valley Dairy and the permit.</u>

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.