

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2
3 In Re:)
4)
5 Appeal of Water Pollution Control Permit:)
6 NEV60025 North Valley Wastewater Treatment Facility – Douglas County, Nevada)
7)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

8 This matter came before a panel of the State Environmental Commission
9 (“Commission”) on October 15, 2007. Appellant John Nolte (“Nolte”) appeared and
10 represented himself. Appellant Stephen Bennett (“Bennett”) did not appear but was
11 represented by John Haug (“Haug”). Appellants Carl and Deborah Larsen (“the Larsens”) did
12 not appear but were represented by Lynn Muzzy. Respondent Nevada Division of
13 Environmental Protection (“NDEP”) appeared and was represented by its counsel, Janet
14 Hess. Intervener Douglas County appeared and was represented by its counsel, Robert T.
15 Morris.

16 Appellants Nolte, Bennett and the Larsens appealed NDEP’s renewal, with
17 modifications, of water pollution control permit number NEV60025 for the North Valley
18 Wastewater Treatment Facility in Douglas County, Nevada. Appellants argued in their appeal:
19 (1) the provisions of the permit are insufficiently detailed to assure nearby residents that the
20 effects of odors and pests will be properly handled; (2) the planned operation of the plant
21 depends on the application for, and amendment of, an effluent management plan by an
22 adjacent private party and that the permits are improperly disconnected; and (3) the
23 particulars of the amended permit are vaguely described and could lead to misinterpretation or
24 conflict during compliance reviews.

25 At the beginning of the hearing, counsel for NDEP moved to have Bennett’s and
26 Larsens’ appeals dismissed because they did not have legal representatives present. The
27 Commission denied NDEP’s request because NAC 445B.895 does not require representation

1 by counsel. Counsel for NDEP also moved to have all appeals dismissed because the
2 appeals failed to present an issue that was within the authority of NDEP. The Commission
3 denied NDEP's request because the matters appealed were within the purview of the permit
4 and were therefore within the purview of the Commission to hear.

5 After review of the admitted documentary evidence, after hearing the testimony of Alan
6 Tinney, and after hearing arguments of Nolte, Muzzy, and counsel for NDEP and Douglas
7 County, the Commission finds and decides as follows:

8 FINDINGS OF FACT

9 1. On March 29, 2007, Douglas County requested a renewal and modification of
10 permit NEV60025 to include the Phase II expansion of the North Valley Wastewater
11 Treatment Facility (the "Facility").

12 2. Douglas County completed a Groundwater Discharge Permit Application ("Permit
13 Application"), submitted it to NDEP, and paid a \$4,000.00 fee.

14 3. Prior to submitting the Permit Application, the Douglas County Planning
15 Commission had a meeting about the Facility's special use permit, and as a result of public
16 comments received, Douglas County moved the effluent treatment pond a hundred feet
17 farther to the north, which was a hundred feet farther away from the Saratoga Springs
18 subdivision, and committed to install an aerator during the first phase of construction, rather
19 than waiting for odor complaints to arise. After a public hearing, the Douglas County
20 Commissioners upheld the Douglas County Planning Commission approval as it was
21 modified.

22 4. In its Permit Application, Douglas County requested an increase in MGD flow from
23 a maximum of 0.45 million gallons per day to 1 million gallons per day and it identified three
24 sites to which it would discharge effluent: Incline Village wetlands, an on-site rapid infiltration
25 basin, and the Bently Kirman tract.

26 5. Carl Ruschmeyer ("Ruschmeyer"), the county engineer for Douglas County,
27 signed the Permit Application and certified that to the best of his knowledge and ability the

1 information contained in the application was true, complete and accurate.

2 6. NDEP reviewed the Permit Application and determined that it was complete and
3 met all the qualifications.

4 7. On June 26, 2007, NDEP notified Ruschmeyer that a public notice/hearing was
5 being published in the Nevada Appeal newspaper, comments pertaining to the public notice
6 were due by July 28, 2007, and that a public hearing was scheduled for August 1, 2007 at
7 1:30 p.m. at the Legislative Building, 401 South Carson Street, Room 3138, Carson City,
8 Nevada.

9 8. On June 28, 2007, a Notice of Proposed Action and Notice of Public Hearing
10 pertaining to the Permit Application was published in the Nevada Appeal newspaper. The
11 Notice of Proposed Action and Notice of Public Hearing was placed on the NDEP website and
12 was sent to a list of people who had indicated they wanted to be notified of all of NDEP's
13 proposed actions.

14 9. In the Notice of Proposed Action and Notice of Public Hearing, NDEP stated that
15 on the basis of preliminary review of the requirements of the Nevada Revised Statutes as
16 amended and implementing regulations, it had made a tentative determination to issue (renew
17 with modification) the proposed permit to discharge for a period of five years. The Notice of
18 Proposed Action and Notice of Public Hearing stated that written comments were due by July
19 28, 2007 at 5:00 p.m. and that there a public hearing would be held on August 1, 2007 at 1:30
20 p.m. at the Legislative Building, 401 South Carson Street, Room 3138, Carson City, Nevada.

21 10. NDEP prepared a fact sheet regarding the Permit Application which was posted
22 on NDEP's website.

23 11. NDEP prepared a draft permit in advance of the public notice. The draft permit
24 contained five outfalls to which the Facility could discharge effluent: (1) on-site landscape
25 reuse areas and on-site dust control and construction use; (2) Incline Village wetlands; (3) the
26 Facility's RIB(s); (4) the Facility's effluent holding basin; and (5) Bently Kirman tract irrigation
27 areas.

1 12. On August 1, 2007, NDEP held a public hearing on the issuance of proposed
2 permit NEV60025 for the Facility. Members of the public who spoke at the hearing included
3 Curtis Smith, Steve Bennett, John Haug, Deborah Larsen, and John Nolte.

4 13. On August 28, 2007, NDEP issued its Notice of Decision in which NDEP
5 responded to all the comments it received during the public comment period and during the
6 public hearing. Appellants Bennett, Nolte and the Larsens were provided with a copy of the
7 Notice of Decision.

8 14. On August 28, 2007, NDEP issued the final Nevada Groundwater Discharge
9 Permit 60025 for the Facility (the "Permit").

10 15. The Commission received a timely request for an appeal hearing from Nolte,
11 Bennett, and the Larsens regarding the Permit.

12 16. The Permit states that there shall be no objectionable odors from the facility,
13 irrigation plots, effluent holding basin, evaporation/percolation area(s), or facility discharges.

14 17. Odors at the Facility will be handled in multiple ways. When the effluent pond is
15 built, solar mixers will be installed. Odor controls will also be done at the headworks, which is
16 at the beginning of the treatment plant where all the collection lines come into the plant. If the
17 mixers within the effluent pond are not sufficient, additional mixers will be added in the future.

18 18. The Permit states that facility operations shall not cause or contribute to the
19 propagation of pests or vector nuisances, including mosquitoes.

20 19. NDEP worked with Douglas County to place the area within the Douglas County
21 Mosquito Abatement Group.

22 20. The Permit requires Douglas County within 90 days of the completion of the
23 effluent holding basin to submit to NDEP an updated O&M Manual which must include
24 provision for vector attraction controls including mosquitoes and provisions for odor controls
25 from the facility, including the effluent holding basin, irrigation plots, evaporation/percolation
26 area(s), and facility discharges.

27 21. The Permit authorizes Douglas County to discharge effluent from the Facility to:
28

1 (1) on-site landscape reuse areas and on-site dust control and construction use; (2) Incline
2 Village wetlands; (3) the Facility's rapid infiltration basin(s) RIB(s); (4) the Facility's effluent
3 holding basin; and (5) Bently Kirman tract irrigation areas.

4 22. The approximately 300,000 gallons per day that the Facility currently discharges
5 goes to the Incline Village wetlands. The rapid infiltration basin is a pilot study. If the basin
6 fails to provide the necessary filtration to the secondary effluent, the basin will be shut down.
7 Another outfall area for effluent is on-site landscape reuse areas and dust control and
8 construction use, but this outfall area is not a high-end use.

9 23. The three locations that can accept the most effluent from the Facility are: (1) the
10 rapid infiltration basin, which is the subject of the pilot study; (2) the Incline Village wetlands;
11 and (3) the Bently Kirman tract.

12 24. A separate permit issued by NDEP governs the Bently Kirman tract. Although an
13 effluent management plan currently exists for the Bently Kirman Tract, it does not address
14 taking flow from the Facility. Before Facility effluent can be discharged to the Bently Kirman
15 tract, Bently Kirman must submit a permit application which will go through the public notice
16 and comment process.

17 25. The Permit authorizes the Facility to discharge effluent to all five locations with
18 whatever flow amount it determines, not to exceed one million gallons per day. If the five
19 locations identified in the Permit cannot accept the flow from the Facility, the Facility cannot
20 discharge that amount of flow.

21 26. If the Facility does not have a location to which it can discharge effluent, Douglas
22 County cannot produce the effluent. If the Facility goes over its flow or does not have a place
23 to which it can discharge effluent, Douglas County is in violation of the permit. If the Facility
24 discharges to any location other than the five locations identified in the Permit, it is a violation
25 of the Permit.

26 27. The Permit does not limit the capacity of the Facility to discharge effluent if Bently
27 Kirman does not apply for use of effluent from the Facility.

1 CONCLUSIONS OF LAW

2 1. The Commission has jurisdiction to hear this appeal pursuant to NRS 445A.605.

3 2. Douglas County complied with NAC 445A.230, NAC 445A.231, and NAC
4 445A.232 when it filed its Permit Application for the Facility.

5 3. NDEP complied with NAC 445A.233 when it prepared its draft permit in advance
6 of public notice.

7 4. NDEP complied with NAC 445A.234 and NAC 445A.239 when it published and
8 circulated the Notice of Proposed Action and Notice of Public Hearing regarding the Permit
9 Application.

10 5. NDEP complied with NAC 445A.236 when it prepared a fact sheet regarding the
11 Permit Application.

12 6. NDEP properly issued the final Nevada Groundwater Discharge Permit 60025 and
13 acted within its authority as granted by the Nevada Water Pollution Control Law, NRS Chapter
14 445A, and its implementing regulations, NAC Chapter 445A.

15 ORDER

16 Based on the foregoing findings of fact and conclusions of law, NDEP's issuance of
17 Nevada Groundwater Discharge Permit 60025 to Douglas County on August 28, 2007 is
18 affirmed.

19 Dated this ____ day of November, 2007.

20
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22 _____
23 Lew Dodgion, Panel Chair
24 State Environmental Commission
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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was duly mailed,
5 postage prepaid, to the following:

6 Appelants

7 Stephen L. Bennett
8 2906 La Cresta Circle
9 Minden, NV 89423

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An employee of the State Environmental Commission

DATED: _____