BEFORE THE STATE ENVIRONMENTAL COMMISSION STATE OF NEVADA

In Re:

Appeal of the Water Pollution Control Permit)
No. NEV0070005, issued to Silver Peak)
Lithium Project (Chemetall Foote Corporation))
by Silver Peak Ad Hoc Advisory Committee.

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S BRIEF IN RESPONSE TO DOCUMENTS FILED BY APPELLANT

Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation ("NDEP"), by and through counsel, Catherine Cortez Masto, Nevada Attorney General, and Cassandra P. Joseph, Senior Deputy Attorney General, hereby files this brief in response to the documents filed by Appellant on or about June 28, 2013 in the appeal of the renewal of the Water Pollution Control Permit No. NEV0070005 (the "Permit") issued to Rockwood Lithium, Inc. (formerly Chemetall Foote Corporation) (the "Permittee") for the Silver Peak Lithium Facility ("Facility").

INTRODUCTION

The documents filed by Appellant on or about June 28, 2013 were neither timely nor related to the issues before the State Environmental Commission ("SEC") in this appeal. The SEC's Second Amended Order dated June 5, 2013 required Appellant to file a brief no later than June 17, 2013 regarding the issues on appeal, namely the renewal of the Permit. Instead, Appellant provided documents related to an accidental release that occurred at the Facility on April 28, 2013, almost one year *after* the June 7, 2012 renewal of the Permit. Therefore, even if all of the allegations in the documents filed by Appellant were accurate—which they are not—no basis exists for the SEC to reverse the renewal of the Permit that occurred a year prior.

Moreover, to be clear, the Permit renewed by NDEP does not allow the Permittee to discharge process fluid outside of the fluid management system. Therefore, the accidental release that occurred on April 28, 2013 as a result of operator error was not authorized. Accordingly, pursuant to the terms of the Permit, and with oversight by NDEP, the Permittee

is conducting appropriate assessment of the conditions at the Facility following the release. While the assessment is not yet complete, the evidence thus far indicates that no threat to the environment or human health and safety exists as a result of the release. In any case, Appellant cannot show that NDEP erred in renewing the Permit.

II. FACTUAL BACKGROUND

The Facility operated under a National Pollutant Discharge Elimination System Permit from 1978 until 1992 when NDEP issued a Water Pollution Control Permit under its new water pollution control permitting program. The Permit has been renewed every five years since 1992, and the 2012 renewal of the Permit is the subject of this appeal. Under the Permit, the Permittee is authorized to produce lithium hydroxide and lithium carbonate from the lithium-rich groundwater, which is pumped from the groundwater basin beneath the playa that lies to the southeast of the Facility and the town of Silver Peak. Silver Peak is located about 40 miles southwest of Tonopah.

The groundwater within the Clayton Valley Basin where Silver Peak is located is naturally high in lithium chloride and other salts and contains total dissolved solids (TDS) of over 140,000 mg/L, well over the secondary drinking water standard of 1,000 mg/L. The Permittee is permitted to pump the groundwater from the Clayton Valley Basin to ponds on the playa above the basin to allow evaporation before pumping the concentrated lithium brine to the process plant. At the process plant, a small amount of reagents such as lime and soda ash are added to the concentrated lithium brine to adjust the pH and to aid in the process of extracting the lithium that is naturally present in the groundwater. After extraction of the lithium from the brine, the remaining brine is discharged to the playa, which is located approximately 1,000 feet from the process plant. Because the discharged brine contains the same components as the groundwater, minus the lithium and adjusted for pH, no risk exists for contamination of the groundwater based on the permitted discharge. In fact, the discharged brine generally contains lower TDS values than the groundwater itself and is therefore in some aspects "cleaner" than the natural groundwater.

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Although the following facts regarding a recent release of process brine are not relevant to whether or not the Permit was validly renewed, because Appellant focuses on the release in his recently filed documents, NDEP will address the issue in order to answer questions the SEC may have regarding the incident.

On or about April 28, 2013, a release occurred at the Facility at about 9:50 a.m. The release discharged approximately 20,000 gallons of process brine, which consisted of the concentrated lithium brine after evaporation in the ponds, with small amounts of lime and soda ash added to adjust for pH. The release occurred as a result of an occluded drainpipe, which caused overflow of the fluid management system. Instead of flowing via underground pipe beneath the highway, the released brine flowed from the process plant across the highway and ultimately to where the permitted discharge point is located for release to the playa. See Exhibit B, Release Map. Despite Appellant's assertions otherwise, there is no evidence that the released brine reached any portion of the playground or school, which is located up gradient from the discharge point. Id.

Pursuant to the terms of the Permit and under the direction of NDEP, the Permittee provided samples of the released brine to a State-certified laboratory for testing. **NDEP** received the test results on June 10, 2013, which confirmed that the released brine was in fact concentrated lithium solution with lime and soda ash included. At NDEP's direction, the Permittee subsequently provided six samples of soil to a State-certified laboratory for testing. Three samples are from the release path and three are from background soils. See Exhibit B, Release Map. Upon receipt of the test results from the State-certified laboratory, NDEP will compare the sample test results to determine whether any contaminants appear in the NDEP will pursue remediation and release path that are not in the background soil. enforcement as required by law and under the Permit.

III. **LEGAL ANALYSIS**

Appellant has failed to show that NDEP erred in renewing the Permit. As addressed in its Motion to Dismiss originally filed on September 20, 2102, and renewed on May 29, 2013, none of the constitutional or statutory arguments raised by Appellant in its appeal papers

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provide a basis for modifying or denying the Permit. See NDEP Motion to Dismiss filed September 20, 2012. Because the condition of the natural groundwater is such that no contamination can reasonably occur by discharging similar or cleaner brine into the playa, and because the brine does not pose a threat to human health and safety even if human contact occurred, Appellant's assertions regarding danger to human health and safety or to the environment are unfounded. Further, because the town of Silver Peak obtains its water from a separate aquifer that is separated by a fault barrier, there is no reasonable risk of contamination to Silver Peak's drinking water supply as result of the Facility's operations. NDEP complied with all applicable statutes and regulations in renewing the Permit and Appellant simply has not met its burden of showing otherwise. See NRS 233B.135(2)-(3) (deference to agency decisions applies on a petition for judicial review of a contested case).

Further, the most recent filings by Appellant focus almost entirely on a release incident that occurred almost one year after the Permit was renewed, and therefore, as a matter of law, fail to provide any legal basis for finding that NDEP erred when it renewed the Permit. See NAC 445B.8914(5) (The SEC "will not . . . consider evidence which was not submitted to the Department before the issuance of the decision or order which is the subject of the appeal"). As such, the SEC should affirm NDEP's renewal of the Permit.

Moreover, NDEP is appropriately enforcing the provisions of the Permit, which provide for certain action to be taken in the event of a release. The Permit specifies that the Permittee shall "contain within the fluid management system all process fluids including all meteoric waters" See Exhibit A, Permit at I.A.2. The Permit also includes provisions for the Permittee to follow in the event of an accidental release. See Exhibit A, Permit at Section II.B.3. In accordance with the Permit and with NAC 445A.2269, the Permittee is conducting an assessment of the conditions at the site of the facility following the release, with oversight by NDEP. NDEP will take appropriate remediation and enforcement action as appropriate once the assessment is complete.

In short, Appellant cannot show that NDEP erred when it renewed the Permit because NDEP complied with all of the constitutional, statutory, and regulatory requirements.

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IV. CONCLUSION

For the reasons stated herein, NDEP respectfully requests that this appeal be dismissed, or that the SEC affirm NDEP's renewal of the Permit.

DATED this 3rd day of July, 2013.

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CERTIFICATE OF SERVICE

l	OLIVII IONI E OLIVIOE
	I, Rosiland M. Hooper, certify that I am an employee of the Office of the Attorney
	General, State of Nevada, and that on this 3rd day of July, 2013, I sent via electronic mail to
	the email addresses below and by depositing for mailing a true and correct copy of the
	foregoing NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S BRIEF IN RESPONSE
	TO DOCUMENTS FILED BY APPELLANT, via United States Postal Service in Carson City,
	Nevada, by first class mail, postage prepaid, to the following:
	John Walker, Secretary State Environmental Commission 901 South Stewart Street, Suite 4001 Carson City, Nevada 89701 Email: jbwalker@ndep.nv.gov
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