

HAND DELIVERED

August 5, 2011

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John Walker
Executive Secretary
Nevada State Environmental Commission
901 South Stewart St.
Suite 4001
Carson City, NV 89701-5249

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ENVIRONMENTAL PROTECTION

RE: Mercury Operating Permit to Construct: Phase 2
AP1041-2690, FIN A0404, The Plum Mining Company, LLC

Dear Mr. Walker,

I am writing you to appeal the administrative decision of the Bureau of Air Quality Planning to approve the above referenced permit application.

NRS 445B.100 states "it is the public policy of the State of Nevada to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and **preserve visibility and scenic, esthetic and historic values of the State.**" (Emphasis added)

The National Park Service (NPS), the designator of National Historic Landmarks, has placed the Virginia City National Historic Landmark on their endangered list.

On the NPS website they state, "The cumulative effect of contemporary surface mines within the central corridor of the district has been a gradual destruction and disintegration of the historic landscape that constitutes the visual heart of the historic district. ... Many of the district's numerous archeological sites are deteriorating through natural processes and are being damaged and destroyed through human activities."

I believe that Comstock Mining Inc.'s (CMI) proposed activities within the Virginia City National Historic Landmark and the Comstock Historic District is at odds with NDEP's statutory mandate to protect the scenic, esthetic and historic values of the State of Nevada.

The administrative hearing, held on April 21, 2011 dealt with the narrow issue of the "Mercury Operating Permit to Construct" and the emission of mercury from the Plum Mining LLC (a wholly owned subsidiary of CMI) processing mill at American Flats, in Storey County. I am concerned about numerous aspects of the publicly stated plans of CMI in this fragile historic area.

I have received the "Notice of Response to Comments" prepared by Rob Bamford and there are a number of issues I would address:

First, Mr. Bamford asserts that an EIS can only be required by a Federal action. Although this is technically correct, it would be my contention that the public comments regarding this item were more generally aligned with the concept of an EA or an EIS. That is, the public wishes to see a comprehensive, science based, evaluation of the impacts of the

applicants proposed activity within a broader environmental context.

Second, Mr. Bamford states “There will be multiple chances for the public to review and comment on the various aspects of the proposed project.” While this is true, it is also true that each permitting agency typically takes the same narrow stance regarding the limits of their review parameters. As a consequence, the cumulative effects of a proposed action are rarely addressed. Likewise the effect of any particular permitting action is rarely considered within context of the overall effect of the project as a whole. The concept of “if not but for” comes to mind.

Third, Mr Bamford is poorly informed regarding the Carson River Mercury Superfund Site. He states that; “...not all of Silver City is part of the Superfund designation.” I would strongly suggest this is inaccurate. Additionally, the Superfund site extents throughout the Gold Canyon area and the Historic District in general, areas CMI has publicly stated that they intend to actively explore and or mine. There is a current effort underway to more accurately characterize the Superfund site. The initial inventory identified 100+ known sites; further research has identified 300+ sites.

Fourth. I was pleased to see Mr. Bamford stipulate that the annual stack testing would be conducted by an independent third party and that “interlocks” would be in place to provide for automatic shut downs. However, the continual operational monitoring and recording remains an internal responsibility of CMI personnel. Although this may be a “standard procedure” for regulatory agencies, I would respectfully submit that this circumstance is not ordinary. An independent third party should be responsible for the continual monitoring and reporting. Additionally, the Storey County should be specifically stipulated as a party to receive copies of all monitoring reports.

Fifth, on page 11 Mr. Bamford states: “Issues of past noncompliance from 2001 and 2007 from other regulatory agencies cannot be used to withhold due process under this proposed permit action.” There was no intention to prevent or obstruct “due process”. The intent of Public Comment No. 3 was to provide a historic context regarding previous noncompliance on the part of Plum Mining LLC in an effort to provide your agency with pertinent information. Hopefully this information would influence your agency’s review process and provide justification for more comprehensive stipulations regarding the operational aspects of the permit.

Sixth, Mr. Bamford’s response to Public Comment No.6 continues to take a myopic stance regarding his agency’s purview and authority. While it is true that there are numerous permits required, all of which afford public input, there remains the question of broad and cumulative adverse environmental effects. Mr. Bamford state: “...permitting of the retort and furnace do not provide authority to develop pits and/or ponds or perform exploratory drilling.” Here again the concept of “if not but for” comes to light. It is not unusual for an applicant for a permit from one agency, to use the fact that another agency has already approved another permit for the applicant, as justification for the issuance of a permit. In this manner broad adverse cumulative environmental effects are typically never addressed. The fact remains that each permit required, if reviewed only within rigid boundaries of each

agency's purview, may be determined to be appropriate, and the end result can be environmentally devastating.

Respectfully submitted,

The Comstock Residents Association
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