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FEB 08 2012

FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING
BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

ENVIRONMENTAL PROTECTION

1. Name, address, telephone number, and signature of applicant:

Name: Gayle Sherman, for the Comstock Residents Association (CRA)

Address: P.O. Box 29, Silver City Nevada, 89428

Telephone: 775-847-0661

Signature: Gayle Sherman

Representative Capacity (if applicable): Secretary/Treasurer of the Comstock Residents Association.

2. Specify type of applicant: Individual, Partnership, Corporation, or Other: Corporation

3. Other person or persons authorized to receive service of notice: John Marshall, Robert Elston, Robin Cobbey

4. Complete description of the business or activity and the location of the activity involved in the request: Comstock Mining Inc. (CMI) POB 1118 Virginia City NV 90440 . CMI wants to engage in exploratory drilling within the Carson River Mercury Superfund (CRMS) site at the Dayton Consolidated Mill in Silver City Nevada, in order to determine the location of gold and silver deposits prior to engaging in open pit mining. Contested Permit: Reclamation Permit # 0315 .

5. Nature of the appeal and grounds thereof: This project is located on 19.75 acres within the Carson River Mercury Superfund site (CRMS). According to NDEP and the reclamation permit application, historic mills and mines were located on this site. It is well documented in EPA publications, that mill and mine sites are the source of mercury, arsenic and lead contamination within the CRMS. Although the Reclamation Permit requires that CMI develop a Sampling and Analysis Plan (SAP) for testing of the mine wastes and/or mill tailings disturbed by the exploration activities, the final SAP was not available at the time of the hearing and was not included as part of the opportunity for Public Comment. The final approval for the SAP was issued by NDEP on February 2, 2012. Per NAC 519A.160, 185, 190 and 210; NRS 233B.032 and NRS 233B.121, a public hearing should have been conducted to provide an opportunity for the public to submit written and oral input. The SAP is an important standard that identifies the areas on CMI property in the CRMS that will be tested for toxic substances based on archeological locations of mines and mills. However, the underlying archeological survey and field review referenced in the SAP were not reviewed for validity by NDEP staff. The SAP provides for the removal of certain areas of CMI holdings from the CRMS prior to testing. As a result, the Permit/SAP is not adequately protective of public health and safety per NAC 519A.260. The testing of the soil to be disturbed by CMI's exploratory mining impacts the health and welfare of the residents in the area, some of whom live within 300 feet of proposed soil disturbances. The public's right to full review and have input into the SAP should be provided to the extent required by law. NDEP, in its summary of responses to the hearing on Reclamation Permit #0315, stated that the SAP would be made available for public review and then provided the CRA with only 11 calendar days to review the 659-page document and provide input. The review was informal in nature and not in compliance with legal requirements.

6. Section or sections of the State Air Quality Regulations, Water Pollution Control Regulations, Hazardous Waste Regulations, Solid Waste Management Regulations, or NRS section involved in the appeal. See above.

7. Approximate time in hours and minutes necessary for delivery of oral testimony and reading of prepared statements as admissible evidence to be entered in the record: 4 hours

Date of Request 2-8-12

Send Form To: John B. Walker, State Environmental Commission, 901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249