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Governor



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Executive Secretary

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Recording Secretary

SEC Appeal Hearing
Notice Pursuant to NRS 233B.121 and NAC 445B.891

Date: October 25, 2010

To: Appellant:
Sierra Club
Represented by Dan Galpern, Western Environmental Law Center

Respondent:
Nevada Division of Environmental Protection, Bureau of Water
Pollution Control
Represented by William Frey & Carolyn Tanner, Office of the
Attorney General

Intervener:
NV Energy
Represented by Thomas C. Woodworth, Esq.

From: John B. Walker, Executive Secretary

Subject: Appeal Hearing: Reid Gardner Appeal – Water Pollution
Control Groundwater Permit #NEV91022

A three-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing on the above referenced permit. The hearing will begin on November 4, 2010 at 9:30 a.m. in Reno, Nevada at the Nevada Department of Wildlife, Conference Room "A", 1100 Valley Road. The hearing will continue on November 5th, if necessary, at the same location. The November 4 and 5 hearing dates were selected after consultation with the parties, and the parties were informed of the dates on September 22, 2010.

The SEC has jurisdiction to hear this appeal pursuant to NRS 445A.605, NRS 445A.610, NAC 445B.890 and NAC 445B.891. The statutes and regulations involved in this appeal hearing are: NRS 445A.305, NRS 445A.465, NRS 445A.495, NAC 445A.263 and NAC 445A.250.

About the Appeal: On June 24, 2010 the Nevada Division of Environmental Protection (NDEP) issued groundwater permit NEV91022 to NV Energy for the Reid Gardner station. The Reid Gardner station is a coal fired power plant located in Moapa, Clark County, Nevada. The renewal modification permit authorized discharge of process and other wastewater to eight existing on-site double-lined evaporation ponds and eventually to nine yet-to-be constructed double-lined evaporation ponds in the "Mesa" area of the Reid Gardner station. The permit was subsequently appealed by Sierra Club on July 2, 2010.

The Sierra Club presents five issues. First, NDEP failed to provide Sierra Club with adequate notice of its right to appeal the final permit, even though its representatives provided significant comments during public participation. Second, the “no discharge” permit is insufficient to ensure against pollutant discharge because, for example, industry standards for HDPE dual-lined ponds allow for a certain amount of leakage as part of their design but there is no process or system required by the permit to prevent, detect, or remediate such leakage beyond the second liner. Third, the permit purports to shift responsibility for soil and groundwater contamination to the Bureau of Corrective Action in contravention of NRS 445A.465. Fourth, the permit does not protect water quality in the event of accelerated climate change. Although the Bureau of Water Pollution Control states that it lacks regulatory authority regarding climate change, state agencies retain inherent authority and responsibility to maintain the quality of state waters. Fifth, given the facility’s ongoing violations of previous permits and failure to remediate previous contamination, the permit renewal must be denied, or in the alternative, modified to require rigorous groundwater monitoring under and around the existing and proposed evaporation ponds, as well as to require a sufficient plan to remediate the inevitable contamination.

Procedural History: On July 12, 2010, permittee NV Energy petitioned the SEC for leave to intervene in the appeal, which the SEC granted on September 21, 2010. Upon receipt of NDEP’s request, the SEC ordered briefs and set forth a briefing schedule on September 22, 2010. On October 6, 2010, the Sierra Club filed a motion requesting subpoenas for certain documents, a continuance of the November 4 and 5 hearing, and a preliminary injunction to suspend the effectiveness of the permit and halt construction of new wastewater ponds. The SEC held a preliminary hearing on October 21, 2010, at which it denied the request for preliminary injunction and continuance of the November 4 and 5 hearing. Although the SEC did not issue subpoenas, it ordered that NDEP produce certain documents to Sierra Club before the hearing. The SEC also suspended the briefing schedule.

Related Information: Additional information about this appeal, including all of the documents referenced herein, is available on the SEC website at the following location: http://sec.nv.gov/main/reid_gardner.htm

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: <http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>. NRS 233B.121 to 233B.150 are also applicable.

Attachments: SEC Rules of Practice (NAC 445B.875)

cc: Members- SEC Appeals Panel
Colleen Cripps, NDEP Acting Administrator
Jon Palm, NDEP/BWPC
Jim Najima, NDEP/BCA
Rose Marie Reynolds, SEC/DAG

CERTIFICATE OF SERVICE

The undersigned, an employee of the State of Nevada, State Environmental Commission, does hereby certify that on the date shown below, a true and correct copy of the APPEAL HEARING NOTICE for the NOVEMBER 4-5, 2010 Reid Gardner Appeal (Permit# NEV91022) was duly mailed, postage prepaid, to the following:

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Kathy Rebert, Recording Secretary, SEC

DATED: October 26, 2010