

SEC FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING

UPDATED ON NOV. 8, 2010

BEFORE THE STATE ENVIRONMENTAL COMMISSION

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

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Representing the Moapa Band of Paiutes and the Sierra Club

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

(1) Moapa Band of Paiutes, a recognized Indian tribe organized under a Constitution approved by the Secretary of the Interior on April 17, 1942 and governed by a Tribal Council.

(2) Sierra Club: A nonprofit public benefit corporation organized in part to protect and restore the quality of the natural and human environment.

Together, the Moapa and the Sierra Club are herein referred to as "Appellants."

3. Other person or persons authorized to receive service of notice: **None, subject to amendment**

Complete description of the business or activity and the location of the activity involved in the request:

Nevada Energy (NVE) sought a permit from the Southern Nevada Health District to modify a Class III Disposal Site, including a lateral expansion, at its Reid Gardner power generating facility. A Class III Disposal Site is a landfill that accepts only industrial solid waste. The Reid Gardner landfill disposes of waste materials generated by its coal-fired power plant at Reid Gardner, as well as asbestos generated at NV Energy facilities statewide. The proposed expansion would substantially expand capacity to dispose of wastes in the existing unlined landfill, including disposal of wastes dredged from the current edifice of wastewater ponds in the flood plain of the Muddy River.

5. Nature of the appeal and grounds thereof:

This is an appeal from a solid waste management authority's grant of a permit to NV Energy to modify and expand its coal ash landfill. On Oct. 28, the Southern Nevada Health District Board of Health, on an 8-4 vote, approved an application by NV Energy to modify and expand its Class III landfill.

This appeal is filed pursuant to NAC 444.748 (2) ["Any person who wishes to appeal from a decision or action of the solid waste management authority may do so. Such an appeal must be made in writing in accordance with the State Environmental Commission's procedural rules."] Appellants reserve the right to supplement the authorities under which this Appeal is submitted.

Appellants also intend to further specify the grounds for the appeal in their opening brief in this matter or, if no briefing is granted, then at the commencement of a hearing of this Appeal before the SNHD or other appropriate authority. Subject to amendment, Appellants here denote that the SNHD's decision to grant the landfill permit was not based on substantial evidence, was clearly erroneous, was arbitrary or capricious, and was contrary to law, because, *inter alia*:

[1] NVE's application failed to establish a need for the expanded landfill.

[2] NVE failed to establish that its proposal to modify and expand its landfill will neither "create a health hazard, public nuisance or impairment of the environment" nor "cause or contribute" to

air pollution or pollution of surface or groundwater, thus requiring a denial of the permit modification, while the evidence provided by Appellants and other comments established that the landfill is presently causing such a hazard, nuisance, impairment, and contribution, and that operations under the application for a permit to modify and expand the landfill will exacerbate these problems substantially.

[3] NVE failed in its application to provide an adequate characterization of the wastes it proposes to dump in the expanded landfill.

[4] NVE failed in its application to provide required landfill leachate analysis in its application.

[5] Monitoring data establishes that the existing landfill is presently leaching contaminants into the soil and groundwater. The Nevada Division of Environmental Protection seeks to eliminate the current ground water monitoring program. This will render it far more difficult for citizens, or the SNHD to ascertain the extent of additional contamination that would result from the proposed expansion.

[6] SNHD's approval of the landfill permit violated Nevada law in that the decision was based, in part, on:

- (a) Materials supplied by NV Energy that were unlawfully withheld from public review and the possibility of meaningful public comment,
- (b) SNHD staff recommendations that were based on (a),
- (c) A judgment that NV Energy's Application was complete, because it had been supplemented by materials referred to in (a), even though those were withheld from public review without lawful justification,
- (d) A judgment that the materials referred to in (a) answered challenges to the adequacy under the law of the application that had earlier been raised by commentators, even though these materials were withheld from public review.

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:

Appellants reserves the right, in their opening brief or at hearing, to supplement or modify the following list of sections involved in the appeal.

**NRS 233B (Administrative Procedure Act)
NRS 239.010 [inspection of public records],
NRS 439.366 [duties of board of health],
NRS 444.556(3) [landfill permit application documents are public records],
NRS 444.560(4) [landfill operations in violation of regulations prohibited],
NAC 444.643(5) [board of health may revoke permit for noncompliance],
NAC 444.644 [solid wastes must not create health hazard, public nuisance or environmental impairment],
NAC 444.737(2) [solid waste characterization must identify properties that may create environmental hazards or threaten public health],
NAC 444.739 [requirements of report of landfill design], *inter alia*.**

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:

Approximately 6 hours (sans time for motions):

45 minutes for opening statement, 30 minutes to rebut argument of SNHD and intervenors if any; 15 minutes to cross-examine each intervenor, if any; 2.5 hours for expert witness testimony on direct examination; 60 minutes for expert witness testimony on rebuttal testimony; 30 minutes for closing argument.

Date of Request: **November 6, 2010 – UPDATED ON NOV. 8, 2010**

Sent by Email on Nov. 6, 2010, with update on Nov. 8, to John B. Walker on Nov. 8, 2010, with copy to be mailed on Nov. 8 in c/o State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701-5249.