

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2 In Re:

3
4 Appeal of Water Pollution Control Permit No.
5 NEV0070005
6 Permittee: Rockwood Lithium Inc.

ORDER GRANTING MOTION TO
DISMISS

7 This matter came before a panel of the State Environmental Commission
8 ("Commission") on September 25, 2013. Appellants Paul and Ana C. Rupp and Dehnert
9 Queen ("Appellants") did not appear. Respondent Nevada Division of Environmental
10 Protection ("NDEP") appeared and was represented by its counsel, Cassandra Joseph, Esq.
11 Intervener Rockwood Lithium Inc. ("Rockwood") appeared and was represented by its
12 counsel, Jim Butler, Esq.

13 On June 19, 2012, Appellants filed an appeal of Water Pollution Control Permit No.
14 NEV0070005 issued on June 7, 2012, with an effective date of June 22, 2012, by the Nevada
15 Division of Environmental Protection to Chemetall Foote Corporation, now known as
16 Rockwood Lithium, Inc. At the Commission's request, Appellants then submitted their appeal
17 on a revised form 3 on August 18, 2012. On September 20, 2012, NDEP filed a motion to
18 dismiss.

19 On March 21, 2013, the Commission entered an order establishing a briefing schedule
20 and hearing date, and then at Appellants' request, the briefing schedule and hearing date was
21 continued. When Appellants failed to file a brief by the ordered May 17th date, NDEP
22 renewed its motion to dismiss. The Commission entered an order clarifying the briefing
23 requirements and setting a June 17th due date for Appellants' brief. On June 28, 2013,
24 Appellants filed its opening document. On July 3, 2013, Appellants requested the hearing
25 date be continued, which the Commission granted. NDEP filed its responsive brief on July 3,
26 2013, which Rockwood joined. Rockwood also filed motions to dismiss because Appellants
27 failed to comply with the Commission's briefing orders.

28 Just prior to the scheduled hearing start time on September 25, Appellants submitted

1 via e-mail documents entitled "Comments for inclusion into NEV SEC Sept. 25, 2013 Hearing
2 regarding NEV 00700005 WPC Permit" and "Our Testimony and Evidence for Our Appeal."
3 Valerie King, executive secretary for the Commission, attempted to call Appellants Paul C.
4 and Ana Rupp, but was unable to reach them. She was able to reach Appellant Dehnert
5 Queen who said he would not be at the hearing and that the information stood on its own.
6 Appellants' documents were admitted as part of the public record. NDEP and Rockwood
7 submitted Joint Exhibits 1 through 4, which NDEP had sent to the Appellants prior to the
8 hearing but received no response. Joint Exhibits 1 through 4 were admitted.

9 The Commission heard arguments from counsel for NDEP and Rockwood in support of
10 the motions to dismiss. NDEP argued Appellants failed to prosecute their appeal because
11 they did not appear for the hearing and were unavailable for cross examination. In addition,
12 NDEP argued that Appellants failed to meet its burden that NDEP committed legal error in
13 renewing Water Pollution Control Permit No. NEV0070005.

14 As to Appellants' first issue, NDEP argued there was no constitutional violation based
15 on a fear of groundwater contamination. NDEP stated the drinking water for the town of Silver
16 Peak comes from a different basin and hydrogeographic structures prevent the basins from
17 mixing. The activities by the facility have no potential for contamination of the drinking water
18 for the town or groundwater near the facility. As to Appellants' second issue, NDEP argued
19 there was no basis to deny the permit based on Appellants' request for documents. NDEP
20 notified Appellants the documents were available for inspection at its office or Appellants
21 could send a copier. As to Appellants' third issue, NDEP argued there was no abuse of
22 discretion because the permit does not allow unauthorized releases. Although Appellants
23 cited an April 2013 release, the Commission found that the release was not relevant to the
24 permit because it occurred after the permit was issued in 2012. NDEP noted that after the
25 April 2013 release, three samples were taken within the flow path and three were taken
26 outside the flow path. The samples did not exceed EPA screening levels for industrial
27 standards and no further action was needed. NDEP explained that the water processed by
28 Rockwood is rich in lithium and that soda ash and lime are added to adjust the pH and to help

1 extract the lithium that is naturally present in the groundwater. Regular testing is done of the
2 solution and the groundwater and that the solution in liquid form poses no threat to human
3 health.

4 Rockwood argued that Appellants failed to prosecute their appeal and joined NDEP's
5 motion to dismiss. As explained by Rockwood's witness, Joe Dunn, lithium hydroxide is a
6 downstream product of lithium carbonate. The facility processes it with lime to form lithium
7 hydroxide solution and crystallizes it. It is not a poisonous substance.

8 After considering the documents and evidence presented, the Commission found that
9 there was no evidence to show NDEP made a mistake or omission during the permitting
10 process. The Commission found that Appellants failed to appear and Appellants failed to
11 show that NDEP committed legal error or abused its discretion in issuing Water Pollution
12 Control Permit No. NEV0070005.

13 IT IS THEREFORE ORDERED that NDEP's motion to dismiss is GRANTED and
14 NDEP's issuance of Water Pollution Control Permit No. NEV0070005 on June 7, 2012 is
15 AFFIRMED.

16 Dated this 24th day of October, 2013.

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20 Eugene Gans, Chairman
21 State Environmental Commission
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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing ORDER GRANTING MOTION TO DISMISS was duly mailed, postage prepaid, to
5 the following:

6 Paul and Ana C. Rupp 9171 9690 0935 0012 7090 80
7 Box 125
8 Silver Peak, NV 89047

9 Appellant

10 Dehnert Queen 9171 9690 0935 0012 7090 73
11 10500 Christenson Road
12 Lucerne Valley, CA 92356

13 Appellant

14 Jim B. Butler, Esq.
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19 Attorneys for Intervener Rockwood Lithium Inc.

20 Cassandra Joseph, Esq.
21 Office of the Attorney General
22 100 North Carson Street
23 Carson City, NV 89701

24 Attorney for Nevada Division of Environmental Protection

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26 _____
27 An employee of the State Environmental Commission

28 DATED: October 24, 2013