

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF April 23, 2002**

**HELD AT: Las Vegas, Nevada**

**TYPE OF HEARING:**

**REGULATORY**

**YES**

**APPEAL**

**(Robert Hall)**

**FIELD TRIP**

**ENFORCEMENT**

**VARIANCE**

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

**YES**

**AGENDA**

**YES**

**PUBLIC NOTICE**

**MINUTES OF THE HEARING**

**LISTING OF EXHIBITS**

# A G E N D A

## **NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING**

As provided by Nevada Revised Statutes (NRS) Chapter 233B and Nevada Administrative Code (NAC), inclusive, a panel of the Nevada State Environmental Commission will conduct an appeal hearing on **Tuesday, April 23, 2002 beginning at 9:30 a.m.**, at the Cashman Center, Room 206, 850 Las Vegas Blvd North, Las Vegas, Nevada. The hearing may be continued, if not completed on April 23, to April 24, 2002 at the same location, beginning at 8:30 a.m.

This agenda has been posted at the Grant Sawyer State Office Building and the Cashman Center in Las Vegas, the Washoe County Library, the Department of Cultural Affairs (Division of Library and Archives), and the Division of Environmental Protection Offices in Carson City, Nevada.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

### **I. Appeal Hearing - \* ACTION**

Nevada Environmental Coalition, Robert W. Hall, President, 10720 Button Willow Drive, Las Vegas, Nevada 89134 appeals to the Decisions dated July 20, 2001 by the Nevada Division of Environmental Protection regarding the water pollution control permits for authorization to discharge for the City of Henderson, the Clark County Sanitation District and the City of Las Vegas.

The Nevada Division of Environmental Protection, Bureau of Water Pollution Control, on July 20, 2001, issued water pollution control permits NV0022098 for the City of Henderson, permit NV0021261 for the Clark County Sanitation District and permit NV0020133 for the City of Las Vegas. The permits are for wastewater effluent discharge to the Las Vegas Wash. The Bureau asserts that it acted in accordance with NRS 445A.300 through NRS 445A.730 and NAC 445A.070 through 445A.348.

### **II. General Commission or Public Comment**

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851; by facsimile to (775) 687-5856; or by calling (775) 687-4670 extension 3118 no later than 5:00 p.m., April 17, 2002.

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## **NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF APPEAL HEARING**

A three-member panel of the Nevada State Environmental Commission will conduct an appeal hearing in the matter of:

Nevada Environmental Coalition, Robert W. Hall, President, 10720 Button Willow Drive, Las Vegas, Nevada 89134 appeals to the Decisions dated July 20, 2001 by the Nevada Division of Environmental Protection regarding the water pollution control permits for authorization to discharge for the City of Henderson, the Clark County Sanitation District and the City of Las Vegas.

The Nevada Division of Environmental Protection, Bureau of Water Pollution Control, on July 20, 2001, issued water pollution control permits NV0022098 for the City of Henderson, permit NV0021261 for the Clark County Sanitation District and permit NV0020133 for the City of Las Vegas. The permits are for wastewater effluent discharge to the Las Vegas Wash. The Bureau asserts that it acted in accordance with NRS 445A.300 through NRS 445A.730 and NAC 445A.070 through 445A.348.

The appellant asserts that the Administrative Record is legally and factually insufficient to justify the approval of the three applications. The appellant cites NRS 445A and NAC 445A, NRS 445A.300 to 445A.730. The appellant asserts that the Division did not carry their initial burden for approval to justify and credibly support the applications and decision to approve. The appellant asserts the Administrative Record was not sufficient regarding the cumulative effects on the human environment. The appellant asserts that the Administrative Record was missing annual updates including but not limited to the analyses of alternative wastewater treatment systems pursuant to the Federal Water Pollution Control Act, Section 208(b)(2)(A) through (K). The appellant asserts that the Division's Record of Decision is in violation of Federal Water Pollution Control Act (FWPCA), Section 208 (e).

The appellant asserts that the Record of Decision contains no evidence of the application of best practicable control technology as required by the Federal Water Pollution Control Act, Section 301(b)(1)(A)-(C), (b)(2)(A)-(F), (e), (f) and 1314 (b). The appellant asserts that there is no evidence in the Record of Decision regarding modifications as pursuant to FWPCA, Section 301 (h) or (m), nor is there evidence with Section 302 regarding effluent limitations, or Section 303 regarding current water quality standards or implementation plans. The appellant asserts that there is no evidence of the FWPCA, Section 301(e) planning process. The appellant asserts that there is no evidence of compliance with Section 305, and Sections 401-405 of the FWPCA.

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The appellant asserts that the Administrative Record does not include a supporting final Environmental Impact Statement, the Administrative Record does not include a programmatic final environmental impact statement as defined in National Environmental Policy Act and 42 U.S.C and U.S.C. 4321. The appellant asserts that there was evidence of coordination between federal and state agencies pursuant to the National Environmental Policy Act.

The appellant asserts that the Division failed or refused to comply with the Nevada Administrative Procedures Act, NRS 233B. The appellant asserts that by granting the three permits that the Division was promulgating a regulation as defined in NRS 233B.038. The appellant asserts that in issuing the permits it did not comply with NRS 233B.0603, 233B.0608, and 233B.061.

The appellant asserts that the Administrative Record shows no evidence that the dischargers are complying with the Federal Clean Water Act, nor compliance with the Nevada Revised Statutes or the Nevada Administrative Code. The appellant asserts that the Administrative Record shows no evidence regarding the standards for chlorophyll-a standards in Nevada Administrative Code (NAC 445A.119 to 445A.225) are being met or not. The appellant asserts that there is no Administrative Record evidence whether the standard for body contact recreation (NAC 445A.122.1(d)) is being violated. The appellant asserts the Total Maximum Daily Load (TMDL) phosphorus standards for the City of Henderson were set when the City was not re-using all their sewage effluent. The appellant cited NAC 445A.121, 122, and 119 through 225. The appellant asserts that the Division issued permits using old TMDL's, based upon a June 1998 review in violation of the Federal Clean Water Act.

The appellant asserts the Interagency Lake Mead and Las Vegas Wash Monitoring Program Standard Operating Manual, December 1999 was not part of the Administrative Record. The appellant asserts that the Las Vegas Valley 208 Water Quality Management Plan Amendment of July 1997 was not included in the public notice for the permits nor was it part of the Administrative Record. The appellant asserts that the information contained in the Division's Fact Sheet was not available to the public until the Record of Decision was issued. The appellant asserts the Fact Sheet discussed changes without testing procedures, standards and results that have credible justification or authority.

The appellant asserts that there is no supporting document in the Administrative Record that shows that the Federal Environmental Protection Agency, Region IX had reviewed and signed off on the permits. The appellant asserts that the Record of Decision cites wastewater flow projections in the Las Vegas Valley 208 Water Quality Management Plan Amendment of 1997 and the Comprehensive Adaptive Management Plan for the Las Vegas Wash that are not in the Administrative Record. The appellant asserts that the Division's handling of the comments was prejudicial to the comment process, and that the Record of Decision contains self-serving excerpts and responses that are legally insufficient for any lawful purpose.

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The appellant asserts that the Administrative Record does not deal with fluoride as a contaminant and that this issue was not discussed in the Fact Sheet or the Administrative Record. The appellant objects to the makeup of the Environmental Commission stating that three of the eleven Commissioners are not from the area where the Division's decision is to impact the citizens of Clark County.

The hearing will be held:     **April 23, 2002**  
  **9:30 a.m.**  
  **Cashman Center, Room 206**  
  **850 Las Vegas Blvd North**  
  **Las Vegas, Nevada**

Note: This hearing maybe continued to the next day at the same location at 8:30 am if the business of the hearing is not completed on April 24, 2002.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, Executive Secretary, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851; by facsimile to (775) 687-5856; or by calling (775) 687-4670 extension 3118 no later than 5:00 p.m., April 17, 2002.

This notice is issued pursuant to Nevada Revised Statutes (NRS) Chapter 233B. The hearing will be held in accordance with Nevada Administrative Code, (NAC) 445B.875 to 445B.897, inclusive.

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