

STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

October 31, 2013

Dennis Laybourn
Environmental Manager
Newmont Nevada Energy Investment, LLC, TS Power Plant
910 Dunphy Ranch Road
Battle Mountain, NV 89820

RE: Notice of Alleged Air Quality Violation and Order Nos. 2453
Class I Air Quality Operating Permit AP4911-2502 (FIN A0359)

Dear Mr. Laybourn:

The Nevada Division Environmental Protection, Bureau of Air Pollution Control (NDEP-BAPC) alleges that Newmont Nevada Energy Investment, LLC (NNEI) has violated a condition of their Class I Air Quality Operating Permit AP4911-2502.

On June 18, 2013, the NDEP-BAPC held an enforcement conference with NNEI to discuss the supporting information regarding the draft Notice of Alleged Violation and Order (NOAV) dated May 22, 2013. Based on the information presented during the conference, the NDEP-BAPC has determined that issuance of NOAV No. 2453 is warranted. Failure to comply with a permitted emission limit constitutes a violation of **Nevada Administrative Code (NAC) 445B.275**

Violations: Acts constituting; notice (see below).

NAC 445B.275 Violations: Acts constituting; notice states, in part, that: "1. Failure to comply with any requirement of NAC 445B.001 to 445B.3791, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit.

The attached NOAV No. 2453 constitutes a major violation as defined by Section 2 of **NAC445B.281 Violations: Classification; administrative fines**. NOAV No. 2453 represents the fifth NOAV issued to NNEI in the past 60 months.

As was discussed during the conference, the NDEP-BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for major air quality violations. The NDEP will be recommending a penalty of \$12,420 for NOAV No. 2453.



Newmont Nevada Energy Investment, LLC, TS Power Plant

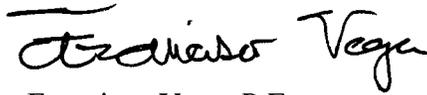
October 31, 2013

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An appeal of NOAV No. 2453 may be requested pursuant to **Nevada Revised Statutes (NRS) 445B.360** and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within 10 days of receipt of this notice, pursuant to **NRS 445B.340**. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Ms. King can be reached at 775-687-9374, or by fax at 775-687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violations or the enforcement conference, please call Ryan Clark at (775) 687-9470 or myself at (775) 687-9343.

Sincerely,



Francisco Vega, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

FV/mt

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2453
2. SEC Appeal Form #3

cc (w/enc. 1): Valerie King, SEC
Eureka County Board of Commissioners
Francisco Vega, NDEP
FIN A0359 (Certified Copy)

E-Copy: Rob Bamford, NDEP
Jeff Kinder, NDEP

Certified Mail No.: 9171 9690 0935 0012 7168 97

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR POLLUTION CONTROL
901 SOUTH STEWART ST., SUITE 4001
CARSON CITY, NEVADA 89701-5249

NO. 2453

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Dennis Laybourn, Environmental Manager

Company Name: Newmont Nevada Energy Investment, LLC

Address: 910 Dunphy Ranch Road, Battle Mountain, NV 89820

Permit Number: AP4911-2502 **FIN:** A0359

Site of Alleged Violation: Newmont Nevada Energy Investment, LLC, TS Power Plant

Date of Observation: 11/13/2012 **Arrival:** N/A **Departure:** N/A

Ambient Temperature: N/A °F **Clear:** **Cloudy:** **Rain:** **Snow:**

Wind Speed: N/A mph **Wind Direction:** N/A

It is alleged that the following regulation was violated by the person named in this notice:

NAC 445B.275 Violations: Acts constituting; notice. 1. Failure to comply with any requirement of NAC 445B.001 to 445B.3791, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit.

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit during a compliance source test.

Evidence:

Newmont Nevada Energy Investment, LLC (NNEI) operates the TS Power Plant in Eureka County, Nevada under the requirements of Class I Air Quality Operating Permit AP4911-2502, issued by the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP-BAPC) on December 29, 2010.

On November 13-14, 2012, NNEI conducted annual compliance source testing on System 01, Subcritical Boiler, 242 MW gross output. The NDEP-BAPC received the compliance source test report on January 14, 2013. After reviewing the report the NDEP-BAPC determined that all tests were conducted in accordance with the approved reference methods and state and federal guidelines. Results from the compliance source test show that System 01 tested at 2.85 lbs/hr sulfuric acid mist, exceeding the permitted emission limit of 2.06 lbs/hr.

On February 6, 2013, NNEI conducted a compliance source re-test on System 01 for sulfuric acid mist. The NDEP-BAPC received the compliance source test report on March 1, 2013. After reviewing the report the NDEP-BAPC determined that the test was conducted in accordance with the approved reference methods and state and federal guidelines. Results from the compliance source test show that System 01 tested at 1.93 lbs/hr sulfuric acid mist, below the permitted emission limit of 2.06 lb/hr.

On June 10, 2013, NNEI provided written documentation to address various issues associated with the failed source test. In the documentation, NNEI claimed that the failed source test was the result of the emission limit being too low, inaccurate test results and the management of the emission controls.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2453

Evidence (cont.):

On June 18, 2013, the NDEP-BAPC held an enforcement conference with NNEI in order to discuss the information supporting the issuance of the draft NOAV on May 22, 2013 and the June 10, 2013 written determination. During the enforcement conference, the NDEP-BAPC and NNEI discussed the information provided by NNEI and the parties agreed that NNEI would provide an addendum to the June 10th submittal and that the NDEP-BAPC would review that additional information and make a formal determination.

On July 2, 2013, the NDEP-BAPC received the additional information requested during the enforcement conference. The NDEP-BAPC reviewed the additional information along with all available information. In the additional information provided, NNEI argued that the emission limit is too low. The basis for the emission limit is NNEI's own emission limit value that it requested in its PSD permit application. The requested limit was subsequently reviewed and approved pursuant to the Federal PSD Best Available Control Technology (BACT) review required under the law. The limit was subject to a 30-day public notice and comment period. It must be noted that NNEI achieved this emission limit for the first five annual consecutive compliance tests, before failing the sixth test. NNEI passed the re-test for the failed test, thereby having passed 6 out of 7 compliance tests for sulfuric acid mist.

NNEI also contends that the emission limit is too low for the Federal Reference Test Method to be accurate. The NDEP notes that the emission limit and the measured emissions are above the method's minimum detection limit. USEPA has not noted any accuracy deficiencies for emission sources that meet the minimum detection level of the method.

The test performed was a valid test, in accordance with the procedures of the Federal Reference Test Method. NNEI attributes the increased emissions which led to the test failure to the management of the NOx catalyst emissions control system. The company details that it increased the quantity of NOx catalyst, which has a side-effect of creating sulfuric acid mist. NNEI was informed by the NDEP-BAPC that it could undergo a PSD permit revision to modify its sulfuric acid mist emission limit.

Based on all available information, it is the determination of the NDEP-BAPC that the emission limit for sulfuric acid written into Class I Air Quality Operating Permit AP4911-2502 is valid, the federal reference method being used for the compliance source test is appropriate, the compliance source test conducted on November 14, 2013 was conducted in accordance with the approved reference methods and state and federal guidelines and is therefore a valid test and that NNEI failed to comply with the sulfuric acid emission limit.

Failure to comply with a permitted emission limit constitutes a major violation under **NAC 445B.281 Violations: Classification; administrative fines**. Notice of Alleged Air Quality Violation and Order (NOAV) No. 2453 represents NNEI's fifth air quality violation within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2453

ORDER

Under the authority of NRS 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

_____ To pay the following administrative fine in accordance with 445B.281.1: \$ _____

_____ To take corrective action: _____

_____ To appear for a hearing before the Environmental Commission at:
Date: _____ Time: _____

_____ To appear for an enforcement conference at:
Date: _____ Time: _____

_____ This notice is a warning.

Signature Francisco Vega
Issued by: Francisco Vega, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

Phone: 775-687-9343 Date: October 31, 2013

FV/rc
Certified Mail No.: 9171 9690 0935 0012 7168 97

This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the Environmental Commission of not more than \$10,000 per day of violation.



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING
(Provide attachments as needed)

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

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

Signature: _____

Representative capacity (if applicable): _____

2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

Date of Request: _____.

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701