

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

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-- Public Petition --  
Moapa Band of Paiutes and Sierra Club  
Submitted Pursuant to NRS 233B.120

**DECISION**

At its February 15, 2012 meeting, the State Environmental Commission ("Commission") considered a petition submitted by the Moapa Band of Paiutes and the Sierra Club (together referred to as "Petitioners") pursuant to NRS 233B.120 and NAC 445B.888 which requested a declaratory order. Representatives on behalf of Petitioners, Washoe County Health District, Southern Nevada Health District, NV Energy and the Nevada Division of Environmental Protection ("NDEP") participated.

The petition requested a declaratory order from the Commission that it had jurisdiction to conduct a contested case hearing over, and to decide Petitioners' appeal of, Landfill Permit LF006-CMF-01 issued by the Southern Nevada Health District to NV Energy. Petitioners cited NAC 444.748(2) as the basis for jurisdiction: "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." Solid waste management authority is defined in NRS 444.495 as "(1) the district board of health in any area in which a health district has been created . . . , if the board has adopted all regulations that are necessary to carry out the provision of NRS 444.440 to 444.620, inclusive" and (2) "[i]n all other areas of the State, the Division of Environmental Protection of the State Department of Conservation and Natural Resources."

NDEP explained that before the appeal at issue, no appeal had been filed with the Commission relating to a decision by a solid waste management authority other than NDEP. It noted that there is no specific statutory language governing appeals of solid waste permits in NRS chapter 444. The regulation cited, NAC 444.748, was adopted in 1977. NAC

1 444.980, another regulation governing appeals which was adopted in 1993, does not refer to  
2 decisions by a solid waste management authority but specifically the State Department of  
3 Conservation and Natural Resources: “[A]ny person who requests a hearing before the State  
4 Environmental Commission concerning a final decision by the State Department of  
5 Conservation and Natural Resources pursuant to chapter 444 of NRS may do so by filing a  
6 request, within 10 days of notice of the action of the Department on Form 3.”

7 NDEP referred to the history of NRS chapter 444 and explained that the Nevada  
8 Legislature enacted significant revisions to that chapter in 1993. As a result, three separate  
9 and distinct entities have responsibility for solid waste in the state: NDEP, the Southern  
10 Nevada Health District and the Washoe County Health District. NDEP periodically reviews the  
11 health district programs to ensure that they meet minimum standards established by the  
12 United States Environmental Protection Agency, but NDEP does not review permits issued by  
13 the health districts. NDEP stated that the health districts issue permits under their own  
14 regulatory authority.

15 The Southern Nevada Health District acknowledged that it did not have an appeal  
16 process for permits for the last seven years and stated there is a court process for appeals.

17 The Washoe County Health District stated it had an appeal process whereby a permit  
18 decision could be appealed to the District Board of Health before an appeal was filed with the  
19 district court. It agreed with NDEP that the Legislature did not intend for the Commission to  
20 review or hear appeals of decisions issued by the health districts.


21 After receiving comments and questioning participants, the Commission noted that its  
22 power and jurisdiction are conferred by statute. NRS 444.570(2) sets forth the duties of the  
23 Commission: The Commission shall “[r]eview any determination by the Director of the State  
24 Department of Conservation and Natural Resources that a program for issuing permits  
25 administered by a solid waste management authority is inadequate. The Commission may  
26 affirm, modify or reverse the findings of the Director.” NRS 444.570(2)(c). There is no  
27 reference to hearing appeals of permits issued by any solid waste management authority.  
28 The Commission’s duties under NRS chapter 444 are different than its duties under NRS

1 chapters 445A and 445B. In those chapters, the Commission has been given express  
2 authority to hear appeals of water and air permits issued by the state. See NRS 445A.605,  
3 NRS 445B.360.

4 Based on the foregoing, the Commission finds that it does not have authority pursuant  
5 to NAC 444.748(2) to hear Petitioners' appeal of Landfill Permit LF006-CMF-01 issued by the  
6 Southern Nevada Health District to NV Energy and therefore DENIES the petition filed by the  
7 Moapa Band of Paiutes and the Sierra Club.

8 Dated this 5<sup>th</sup> day of March, 2012.

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Alan Coyner, Vice Chairman  
State Environmental Commission

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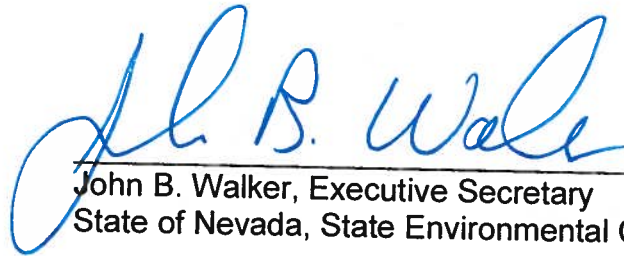
**CERTIFICATE OF SERVICE**

I hereby certify that on the 5 day of March 2012, I mailed a true and accurate copy of the foregoing DECISION by depositing a copy of the same in the United States mail, postage prepaid, addressed as follows:

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State of Nevada, State Environmental Commission