

**Summary Minutes of the  
STATE ENVIRONMENTAL COMMISSION (SEC)**

**Meeting of December 7, 2010, 9:30 AM**

Nevada Division of Wildlife  
1100 Valley Rd., Reno NV

**Members Present:**

E. Jim Gans, Chairman  
Kathryn Landreth  
Tony Lesperance  
Pete Anderson  
Frances Barron  
Mark Turner  
Tom Porta

**Members Absent:**

Alan Coyner  
Jason King  
Stephanne Zimmerman

**SEC Staff Present:**

Rose Marie Reynolds, SEC/DAG  
John Walker, Executive Secretary  
Kathy Rebert, Recording Secretary

**BEGIN SUMMARY MINUTES**

The meeting was called to order at 9:30 am by Chairman Gans who noted the hearing was properly noticed and there was a quorum.

Chairman Gans began by introducing and welcoming two new members of the Commission, Mr. Tom Porta and Mr. Mark Turner. At Chairman Gans' request, Mr. Porta and Mr. Turner each provided some background information about themselves.

**1) Approval of minutes for the October 5, 2010 regulatory hearing - Action Item**

Chairman Gans noted an error for correction on page 5, in the "Mercury" section: The last sentence in that section begins "Mr." Cripps noted... and should read "Dr." Cripps noted...

Ms. Barron moved to approve the minutes of the October 5, 2010 hearing with the noted correction. Mr. Porta seconded and the motion passed.

**2) Presentation by Bureau of Air Pollution Control regarding penalty matrix and table and their use in determining recommended penalties for air quality violations - Non Action Item**

Chairman Gans introduced this agenda item, saying the Commission by statute is responsible for levying fines for air violations and he introduced staff from the Nevada Division of Environmental Protection (NDEP), Bureau of Air Pollution Control (BAPC) who would be presenting the information.

Mr. Larry Kennedy, Supervisor in Air Pollution Control, provided background information to the Commission regarding development of the Penalty Matrix and the Penalty Table used for major air quality violations penalty assessments. These tools were developed at the request of the

Commission to help ensure that administrative fines are assessed consistently and the amount is appropriate to the severity of the violation. Mr. Kennedy explained the Matrix and the Table and development of both. Mr. Kennedy's complete statement can be found on ATTACHMENT 1, the Penalty Table ATTACHMENT 2, and Penalty Matrix ATTACHMENT 3.

Commissioners had several questions for clarification and understanding of the Matrix and Table which included how inspections are performed and timing of inspections, source testing, and permittee reporting. Mr. Mike Elges, Chief for the Bureau of Air Pollution Control, also addressed the Commission, answering some questions relating to higher penalties established by the federal Environmental Protection Agency. Mr. Elges said while there is flexibility to adjust penalties accordingly, there are limitations in state statute. Mr. Elges noted that NDEP tries to keep a balance between appropriate, equitable penalty assessments and being mindful of what is going on at the federal level to make sure US EPA doesn't over-file the state and invoke higher penalties.

Next, Mr. Francisco Vega, Compliance and Enforcement Supervisor, BAPC, elaborated on the implementation of the Table and Matrix. Mr. Vega also discussed the communication with the permittee which includes a notice of the alleged violation as well as a direct meeting in an enforcement conference with the principals of the business. Only after establishing the facts and determining that issuance of a violation is warranted are possible penalties discussed. Mr. Vega used examples of violations to illustrate how the penalty Table and Matrix are used.

At the request of Mr. Porta, Mr. Elges discussed mitigating factors which could result in a decreased penalty. Some of those might include infractions or violations where a piece of equipment malfunctions or in a case where the permittee identifies a problem quickly and is very proactive in fixing the problem.

Chairman Gans asked Mr. Elges to clarify that NDEP does not receive the payment of fines and does not profit by assessment of penalties. Mr. Elges explained that payment of monetary penalty assessments that result from violations in the air program, by statute, are forwarded to the school district in which the violation occurred.

### **3) Discussion regarding procedure for penalty assessments for air quality violations by State Environmental Commission - Non Action Item**

Ms. Reynolds (the Commission's attorney) instructed the Commission about future procedures for consideration and approval of penalty assessments for air quality violations. She explained that upon issuance by the Bureau of Air Pollution Control of a Notice of Alleged Violation (NOAV), one of two procedures may occur.

The first possibility is the company who was issued the NOAV may file an appeal within 10 days of the notice which would result in an SEC appeal hearing by a panel of 3 commissioners.

The second possibility is if the company does not file a timely appeal, the matter comes before the entire Commission for a penalty assessment at the next scheduled regulatory hearing. She noted

that such an action must appear on the agenda and will be listed as "Penalty Assessments for Air Quality Violations".

Ms. Reynolds said it is important for the Commission to remember that if no appeal has been filed, the NOAV is final. This means the Commission is limited to a determination of the penalty assessment; and the discussion is accordingly limited to the penalty amount, as recommended by the Division, and not the details of the violation.

She went on to say that at the regular quarterly meeting, NDEP staff will provide the Commission with a brief overview of the alleged violation and the recommended penalty amount. If the violating company is present, the company may speak about the penalty. Then the Commission will formally determine the penalty by accepting NDEP's recommendation or increasing or decreasing the penalty based on the information presented. If the company is not present, the Commission will still act in determining the penalty assessment.

#### 4) Penalty Assessments for Air Quality Violations - Action Item

Mr. Francisco Vega discussed 4 specific violations and recommended penalties as listed on the Penalty Recommendations Table (ATTACHMENT 4). For Mr. Vega's full statement and detailed information on the violations, see ATTACHMENT 5. Each recommendation was presented, discussed and voted on separately.

- **Lake Tahoe Horizon Casino Resort** – Notice of Air Quality Violations No. 2232 and 2252 for operating without a valid air quality permit and failure to conduct required compliance source testing. Recommended penalty \$38,100.

Several commissioners expressed concern about recurring violations with this company and asked if anything was in place to prevent the violations from happening again. Mr. Kennedy answered that NDEP was finally able to establish the responsible official, the company was responsive during the enforcement meeting and NDEP remains hopeful the company will be in compliance in the future. No one from the company was present at the meeting.

**Motion:** Mr. Lesperance moved to approve staff's recommendation for the \$38,100 penalty, with a second by Ms. Barron. Motion passed unanimously.

- **Eagle Peak Rock and Paving, Inc.** – Notice of Air Quality Violations No. 2248, 2249, 2257 and 2258 for failure to install required air pollution control equipment and exceeding permitted emission limits. Recommended penalty \$30,800.

Mr. Matt Cruse, General Manager of Eagle Peak Rock and Paving, spoke to the Commission saying he had hoped to discuss the violations with the Commission however (after instructions in Agenda Item 3) realized he could not. Mr. Cruse shared some operating details about his plant during the timeframe involving the violation. He asked the Commission to reduce the penalty based on the

company's interest in fixing the problems and the fact the violation was a first time offense and has not recurred.

After some discussion, a vote was taken.

**Motion:** Mr. Porta moved to accept staff's recommendation for the \$30,800 penalty for violations no. 2248, 2249, 2257 and 2258 with Ms. Landreth making the second. The vote passed by majority 4-3 with Mr. Lesperance, Mr. Anderson, and Mr. Turner voting "Nay".

- **Newmont Nevada Energy Investments, LLC** – Notice of Air Quality Violation No. 2226 for exceeding permitted emission limits during a source test. Recommended penalty \$13,725.

Mr. Dennis Laybourn, Environmental Manager at the TS Power Plant (Newmont Nevada), was present at the meeting; he said he had no statement to make.

**Motion:** Ms. Landreth moved for the approval of staff's recommended penalty of \$13,725. Motion was seconded by Ms. Barron and passed unanimously.

- **Ames Construction, Inc.** - Notice of Air Quality Violations No. 2269, 2270 and 2271 for operating without a valid air quality permit, exceedances of permitted operating hours and throughput limit and failure to report permit deviations. Recommended penalty \$11,550.

Mr. Leonard Botielho with Ames Construction was present, however he had no comments.

**Motion:** Ms. Barron moved to accept the recommendation of staff on the \$11,550 fine to Ames Construction. Mr. Porta seconded and the motion passed unanimously.

## Safe Drinking Water

### 5) Arsenic Rule Extensions- Action Item

Ms. Jennifer Carr, Chief of the Bureau of Safe Drinking Water, presented and discussed a set of water systems that need more time to comply with the arsenic rule. As was permitted by state statute and the Safe Drinking Water Act, these systems sought and obtained exemptions by the Commission in 2006 and 2007. In 2008, the companies also received a two-year extension to those original exemptions. Ms. Carr reviewed the background of arsenic exemptions, discussed guidance statutes and regulations, and explained how the bureau arrived at the recommendations the Commission is being asked to approve at this meeting. The full briefing document and the Exemption List can be found in **ATTACHMENT 6**. Systems numbers 4-29 listed for approval on the Exemption List meet the requirements for an extension, one of which is that the system is taking practicable steps to become compliant with the arsenic rule.

Staff recommended a motion in two parts: first, that the water systems numbers 4-7 on the List be approved for a two-year extension and be issued the Arsenic Exemption Extension document that sets milestones for systems with arsenic concentration less than 25ppb but more than 20ppb; second that water systems numbers 8-29 on the List be approved for a two-year extension and be issued the Arsenic Exemption Extension document that sets milestones for systems with arsenic concentration less than or equal to 20ppb. The Commission need not take any other action regarding the remaining systems on the List.

A brief discussion followed the staff presentation regarding some of the systems on the List. There was no public comment on this agenda item.

**Motion:** Mr. Porta moved 1) to accept the Arsenic Exemptions, systems numbers 4-7 on the Exemption List, systems where arsenic concentrations are greater than 20ppb but less than 25ppb and 2) to accept systems 8-29 on the Exemption List, systems where arsenic concentrations are less than or equal to 20ppb. The motion was seconded by Ms. Barron and was approved unanimously.

## Water Quality Planning

### 6) R129-10: Water Quality Standards for Class D Waters & Removal of Legal References for Certain Tribal Waters - Action Item

This regulation, presented by Mr. John Heggeness, Supervisor for the Water Quality Standards Branch of the Bureau of Water Quality, proposes changes to Water Quality Standards for Class D waters and removal of Nevada Administrative Code references to Tribal waters on the Fort McDermitt Indian Reservation. NDEP is proposing to add contact recreation and the associated bacterial water quality standard to four segments of the Class D waters. Also, because State of Nevada water quality regulations are not applicable to waterbodies on tribal land, changes are proposed to the NAC to remove the segments of these reaches that are on tribal lands.

Mr. Heggeness explained the key elements in setting water quality standards: 1) determining the uses of the body of water, 2) establishing criteria to protect those uses, and 3) establishing an anti-degradation provision. A handout was provided to the Commissioners by Mr. Heggeness, (see ATTACHMENT 7).

Ms. Joy Peterson, environmental specialist with the Washoe Tribe, addressed the Commission expressing general support for NDEP's actions to remove water quality standards from Tribal lands.

**Motion:** Mr. Anderson moved to approve LCB file number R129-10 as presented. Motion was seconded by Ms. Landreth and passed unanimously.

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## Office of Financial Assistance

### 7) R115-10: Financial Assistance for Construction of Wastewater Treatment Pollution Control Projects - Action Item

Ms. Adele Basham, Supervisor of NDEP's Office of Financial Assistance (OFA), introduced this regulation and provided details to the Commission. Ms. Basham explained the OFA manages two (2) State Revolving Fund loan programs, one for wastewater control and infrastructure and the other for drinking water infrastructure; she provided some historical context and examples program operations and accomplishments. She noted the OFA has been attempting to make administrative processes for the Drinking Water and Clean Water State Revolving loan programs consistent, and that the proposed revisions in the regulation are one step in that process. Ms. Basham explained, by section, the changes and also handed out an Erratum requesting a correction to the language in Section 3. A copy of the Erratum can be found on **ATTACHMENT 8**.

Commissioners asked a few questions of Ms. Basham regarding the programs.

**Motion:** Mr. Porta moved to approve LCB file number R115-10 with the Erratum. Motion was seconded by Mr. Anderson and passed unanimously.

## Air Pollution Control/Air Quality Planning

### 8) T011-10: Air Pollution Control New Public Notice Provision for Class II Air Permits - Action Item

Ms. Adele Malone, Planning & Modeling Branch Supervisor, Bureau of Air Quality Planning explained this proposed regulation amends just one section of the air program's operating permit provisions. The amendments are in response to U.S. EPA comments on the approvability of the agency's air permitting provisions into Nevada's applicable State Implementation Plan or ASIP. NDEP has been working with EPA to make Nevada's ASIP more consistent with the Nevada Administrative Code. Today's amendment is hopefully the last amendment necessary in order to get the bulk of the permitting provisions approved into the ASIP. Ms. Malone went on to explain the amendments in detail. For Ms. Malone's full testimony, see **ATTACHMENT 9**.

There was discussion regarding posting public notices on the website.

Mr. Porta recommended adding a clarifier to Sections 3 & 4 that for the application to be complete, the appropriate fee is required. Other Commissioners agreed the addition would be beneficial.

**Motion:** Ms. Barron moved to approve staffs' recommendation for T011-10: Air Pollution Control New Public Notice Provision for Class II Air Permits with the addition to Section 1, Line 2 after the word application, "with appropriate fees" and referencing the NAC section. Ms. Landreth seconded the motion and it passed unanimously.

## 9) Administrator's Briefing to the Commission: Non-Action Item

Dr. Colleen Cripps, Acting Administrator for Nevada Division of Environmental Protection (NDEP), welcomed the new Commission members and expressed how much their service on the Commission is appreciated. Dr. Cripps reported on the following topics:

### ❖ Shipments from the National Mercury Stockpile to Hawthorne

The US Defense Logistics Agency (DLA) manages the Department of Defense (DOD) mercury stockpile which consists of approximately 9 million pounds of elemental mercury currently contained in 128,000 flasks. Wanting to centralize the mercury and through a process of evaluation, DOD selected the Hawthorne Army Ammunition Depot as the location for the consolidation.

There are 30 types of flasks and a lot of them are between 40-60 years old. In 2004 an environmental impact process found that there were 8 leaking flasks so the entire inventory was overpacked into 30 gallon steel drums as an additional level of leak protection.

In July of 2006, NDEP started meeting with DLA and questioned the integrity of the containers coming to Nevada and the affect the stockpile may have on public health and safety. Because elemental mercury is considered a commodity, it wasn't originally regulated under the NDEP. So in 2006, NDEP requested the Commission make a change to the state Chemical Acts and Prevention Program (CAPP) regulations to include mercury (over a certain threshold). This gave NDEP the authority to look more closely at the mercury and assure it was transported and stored appropriately. In 2007, the Legislature also amended the state statutes to strengthen the Commission adopted regulation and added mercury under the Chemical Acts and Prevention Program in statute.

In April 2010, DLA agreed to design, construct, and operate a mercury repackaging facility at Hawthorne. The mercury will be shipped to Hawthorne, transferred out of its existing containers, into state-of-the-art mercury containers in a safe, controlled environment. The old containers will then be shipped back in the liner contained drums for retorting and reprocessing.

NDEP has developed standard operating procedures for shipping, monitoring and the handling of any exceedances to mercury monitoring thresholds. Dr. Cripps noted that shipments have begun, after a pilot shipment to evaluate the process relating to CAPP procedures. She said that NDEP is very comfortable with what DLA has done to date, and the procedures in place to do the monitoring are protective of public health and safety.

She advised the Commission that there is an established shipping schedule and that schedule is coordinated with the planning, engineering, and construction of the mercury reflasking facility (which should be completed in the first quarter of 2011).

Dr. Cripps answered several questions for Ms. Barron regarding the mercury and storage.

❖ Bill Drafts during Legislative Session

Dr. Cripps said there are a few bill drafts that look like they are applicable to the Division, however nothing out of normal or unusual. There are some on recycling, some relating to the smog check and alternative fuels programs, and some relating to NDEP's federal facilities program. NDEP submitted one to repeal the greenhouse gas reporting requirements, which have been usurped by EPA's rules.

❖ Greenhouse Gas Rules

Dr. Cripps advised the Commission that EPA's new permitting rules start January 2, 2011 however it is not anticipated there will be an immediate impact on facilities NDEP regulates in Nevada. She said discussions with EPA about NDEP having the appropriate authority to implement that program are ongoing, nevertheless she said the EPA program will create some new sources and will create some complicated issues in how NDEP permits facilities.

Chairman Gans asked about the budget. Dr. Cripps answered that it is much the same as her last report; the Division will be 100% fee-funded. The funding negotiated with the Department of Energy should be finalized this month and will allow NDEP to hire a couple new staff, possibly to aid in new air permitting requirements by EPA.

**10) Public Comment: Non-Action Item**

No comments.

Meeting was adjourned at 1:19 pm.



## ATTACHMENTS

- ATTACHMENT 1: Statement: Mr. Larry Kennedy
- ATTACHMENT 2: Penalty Table
- ATTACHMENT 3: Penalty Matrix
- ATTACHMENT 4: Penalty Recommendations Table
- ATTACHMENT 5: Statement: Mr. Francisco Vega
- ATTACHMENT 6: Arsenic Rule Extensions Exemptions
- ATTACHMENT 7: Handout and Presentation: Mr. John Heggeness
- ATTACHMENT 8: R115-10 Erratum
- ATTACHMENT 9: Statement: Ms. Adele Malone

# ATTACHMENT 1

## NDEP Bureau of Air Pollution Control

Talking Points - Description of the Administrative Penalty Table & Matrix  
Assessing penalties for Major Air quality violations

Dec. 7, 2010

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Mr. Chairman, members of the Commission, for the record my name is Larry Kennedy. I currently supervise one of the permitting branches in the BAPC. From March 2006 through February of this year I supervised the Bureau's Compliance & Enforcement Branch. The Commission is authorized under the NRS to levy administrative penalties for major violations of state rules and regulations that protect air quality. For over 20 years, the Compliance & Enforcement Branch has assessed penalties for those violations on the behalf of the Commission. As part of my responsibilities as Supervisor of the Branch, I assessed penalties for numerous types of violations and recommended those penalties to the Commission in settlement proposals.

This morning I'd like to provide you with some background – a brief history, if you will - regarding how the Compliance & Enforcement Branch developed the tools it uses for assessing penalties. Over the years the Branch has responded to concerns voiced by the Commission regarding penalty assessments. The Branch currently uses a Penalty Matrix, chiefly used for assessing penalties for emission violations, and a Penalty Table. The Table is for assessing penalties for non-emission violations, and was introduced only a few years ago. For the record I'm referring only to penalties for major air quality violations; Penalties for minor air quality violations, which relate to the failure of a minor [Class II or Class III] source to conduct required monitoring, or recordkeeping, or reporting, are specified by the NAC.]

The Bureau first developed the Penalty Matrix over 15 years ago, when the Commission became concerned with apparent inconsistencies in penalty assessments. The Commission requested that the Bureau develop a policy to help ensure that administrative fines are assessed consistently and that the amount assessed is appropriate to the severity of the violation.

## The Penalty Matrix

The Penalty Matrix was based on guidance provided by the U.S. EPA regarding penalty assessments. It relies on 3 important components:

- Gravity (severity) of a violation or excess emission;
- Avoided or delayed costs involved in failing to comply with a regulation or permit condition;
- Adjusting the penalty to reflecting Mitigating Factors, or alternatively a History of Non-compliance.

The base penalty amount depends mainly on the gravity component, which accounts for the

- Volume of an emissions exceedance,
- its Toxicity (if a toxic substance is involved),
- its representing a special risk to the public or environment (eg, proximity to sensitive receptor), and finally
- the Duration of the exceedance.

Under the Penalty Matrix, penalties for major violations start at \$600 to \$1000 *per unit or system, per day*. Or *per hour*, if it is an hourly standard that has been violated. (I should add that, in response to concerns expressed by the Commission, in 2009 the Bureau increased the base penalty for emission violations to \$1000 per unit per day.) Because of the time element, recurring violations can result in very large calculated penalties, especially when multiple emission units are involved.

In the late 1990s, Commissioners expressed concerns regarding the potential impact of the “size [or net worth] of the violator” on some penalties. In response to the Commission’s request, the Bureau revised the Penalty Matrix to help account for the size of a facility or company and its Ability to Pay.

In subsequent years, Commissioners occasionally voiced concerns that the penalties assessed for some types of

violations appeared to be inconsistent. One of the most common questions involved penalties assessed for non-emission or “paper” violations, such as operating without a permit. The Bureau recognized that although the Penalty Matrix works very well for most violations related to excess emissions, it is not well suited to helping assess penalties for non-emission violations or some violations that apparently occurred over a long period of time. In response, in 2007 the Bureau’s Compliance & Enforcement Branch developed an **Administrative Penalty Table** which addresses some of the difficulties encountered in using the Penalty Matrix

## **The Administrative Penalty Table**

At this time I’d like to provide an overview of the Administrative Penalty Table. Mr. Vega will be going into it in more detail. In general, the Table established base penalties for specific types of violations, including (cite example):

- **Constructing or Operating without a Permit**
- **Failure to Install or Maintain Process or Air Pollution Control Equipment**
- Failure to Comply with a Permitted Operating Parameter
- Failure (of major sources) to conduct required Reporting, Monitoring, or Recordkeeping; and
- Violations related to **Source Testing** and the Certification of Continuous Emission Monitoring Systems.

To help account for the severity – the potential impact- of a violation and the source’s Ability to Pay, the Table aligned most penalties with the size or “Class” of a facility. A Major source of air pollution, who holds a Class 1 air quality operating permit, typically incurs a higher penalty for violations than a Class 2 or Class 3 source. Similarly, the base penalty for failure to obtain a Permit for Surface Area Disturbance depends on the size of the disturbance. In the past, we had considered the time during which a source had operated as the basis for a penalty.

We also tried to account for **Violations related to Source Testing** under the Penalty Table. Source tests are conducted only once every one to five years, but represent an important demonstration that a source can and does operate in compliance with its permitted emissions limits. The **failure to conduct source tests** is assessed on a monthly, per-system basis up to a maximum penalty that reflects the avoided or deferred cost of conducting the test.

The Table also contains base penalties for failed source tests, which occur when a facility exceeds a permitted emission limit during a compliance test. The Compliance & Enforcement Branch found that penalties for these violations were among the most difficult penalties to assess – because of the apparent duration of these violations.

Previously, using the Penalty Matrix, the Compliance & Enforcement Branch considered the number of days during which a source apparently operated in violation. Because facilities typically operate for hundreds of days between source tests, application of the Penalty Matrix resulted in calculated penalties amounting to hundreds of thousands of dollars. Obviously we recommended a much lower penalty to settle the violation. As Mike Yamada, my predecessor in BAPC Compliance & Enforcement used to tell violators, “we don’t want to own your company.”

The Bureau developed the Table with the understanding that enforcement policies should encourage the regulated community to demonstrate compliance. For that reason, the penalty for failing a source test is generally much less than the penalty for failing to conduct a test. Excessive penalties for failed source tests represent a disincentive to conduct the tests at all.

In Conclusion...

We believe that introduction of the Penalty Table has helped “level the playing field” by establishing consistent base penalties for some categories of violations. The Compliance & Enforcement Branch still relies on the Penalty *Matrix* to adjust base penalties in order to reflect the severity of an emission exceedance, and to establish penalties for recurring violations.

In conclusion, the C&E Branch believes that the Administrative Penalty Table and Penalty Matrix are useful tools for assessing penalties for major air quality violations. Our goal (policy) is to provide an objective basis for penalty assessments and recommendations. In response to the views expressed by the Commission, the Branch has increased the penalty adjustments for recurring violations over the last few years. However, this is a challenge for recurring violations and repeat violators when calculated penalties of 6- or even 7-figures may be involved.

Before turning the microphone over to Mr. Vega for his description of the current forms of the Penalty Table and Penalty Matrix, I'd be very happy to answer any questions you might have.

# ATTACHMENT 2



## Administrative Penalty Table - Non-Emissions Air Quality Violations

(Note that the Penalty Matrix is used to augment or adjust some penalties)

Page 1 of 2

Permit Class	Constructing or Operating without a Permit (per major processing system or unit)	Failure to Install required Air Pollution Control Equipment (per emission unit)	Failure to Maintain Process or Air Pollution Control Equipment [The Penalty Matrix is used to assess the severity of any resulting Excess Emissions]	Failure to Comply with a Permitted Operating Parameter	Failure to conduct required Monitoring, Recordkeeping, or Reporting - includes incomplete or inadequate source test reports (per reporting period or per unit-day)	Failure to Comply with a Stop Order or any provision in a Schedule of Compliance
1	\$10,000	\$5,000	\$1,000	\$1,000	Annual Compliance Cert: <b>\$2,000</b> Semi-Annual Monitor. Rept: <b>\$1,000</b> Annual Emission Report: <b>\$1,000</b> Other: <b>\$600</b>	\$10,000
2	\$3,000	\$1,000	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$10,000
2 - General	\$1,000	\$1,000	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$10,000
SAD	\$500 plus \$50 per acre of planned disturbance	n/a	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$5,000
3	<b>800</b> (per facility)	\$600	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$5,000
Time Basis (Guideline)	minimum; weekly to monthly (discretionary)	daily	event	per standard or basis of operating parameter	event	daily

## Administrative Penalty Table - Violations Related to Source Tests & CEMS Audits

(Note that the Penalty *Matrix* is used to augment or adjust some penalties)

Page 2 of 2

Permit Class	Failure to provide adequate (30-day) Notification	Failed test - exceedance of permitted emissions limit (minimum; penalty matrix used to assess gravity component)	Late Test, or Failure to Test	Failure to Conduct IOCDs	Failure to Conduct quarterly or semi-annual audit	Failure to Conduct annual RATA
1	\$2,000	\$7,500 per "major" pollutant*, PSD, BACT or NSPS violation; \$5,000 per SM trigger* pollutants; \$4,000 per other pollutant(s)	\$1,000 per system per month, up to a maximum of \$15,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system	\$15,000 to \$30,000	\$75,000
					above based on \$5,000/month penalty for delays in conducting the required audit	
Synthetic Minors*	\$1,000	\$5,000 per SM trigger* pollutants;	\$1,000 per system per month, up to a maximum of \$15,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system	\$10,000 to \$20,000	\$50,000
					above based on \$3,300/month penalty for delays in conducting the required audit	
2	\$1,000	\$3,500 per NSPS violation, \$2,500 other pollutant	\$600 per system per month, up to a maximum of \$10,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system	\$5,000	\$15,000
					above based on \$1,500 to \$2,000 per month penalty for delays in conducting the required audit	
2 - General	\$500	\$4,000 per NSPS violation, \$2,500 other pollutant	\$600 per system per month, up to a maximum of \$10,000 per system	\$100 per system per month, up to a maximum of \$2,000 per system		
SAD	n/a	n/a	n/a	n/a		
3	\$500	\$1,500	\$250 per system per month, up to a maximum of \$2,500 per system	\$100 per system per month, up to a maximum of \$1,000 per system		
Time Basis (Guideline)	each test	also requires retest to verify compliance	each test	each test	requires recertification RATA	

\* A pollutant for which a source is a major source, or which qualifies a source as a synthetic minor source.

# ATTACHMENT 3

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**For:** Facility and FIN  
**Violation:** NAC 445B.xxx and description  
**NOAV:** XXXX

**I. Gravity Component**

**A. Base Penalty: \$1,000 or as specified in the Penalty Table = \_\_\_\_\_**

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

**Adjustment to Base Penalty = \_\_\_\_\_**

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

**Adjustment to Base Penalty = \_\_\_\_\_**

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = \_\_\_\_\_**

**D. Multiple Emission Unit Violations or Recurring Events:**

$$\frac{\text{Dollar Amount}}{\text{Number of years and Units}} \times \text{X} = \text{Total Gravity Fine}$$

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**II. Economic Benefit**

<b>A.</b>	Delayed Costs	+	Avoided Costs	=	<b>Economic Benefit</b>
<b>Subtotal</b>	Total Gravity Fine	+	Economic Benefit	=	<b>Fine Subtotal</b>

**III. Penalty Adjustment Factors**

**A. Mitigating Factors** \_\_\_\_\_ %

**B. History of Non-compliance**

1. Similar Violations (NOAVs) in previous 5 years:
  - Within previous year (12 months) = 3X (+300%)
  - Within previous three years (36 months) = 2X (+200%)
  - Occurring over three years before = 1.5X (+150%) \_\_\_\_\_ %

2. All Recent Violations (NOAVs) in previous 5 years:  
 (+5%) X (Number of recent Violations) = 5% X % = % \_\_\_\_\_ %

**Total Penalty Adjustment Factors - Sum of A & B:** \_\_\_\_\_ %

**IV. Total Penalty**

Penalty Subtotal (from Part II)	X	Total Adjustment Factors	=	<b>Total Adjustment</b>
Penalty Subtotal (from Part II)	+	Penalty Increase or Decrease	=	<b>Total Penalty</b>

**Assessed by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:            < 20% or             $\geq 20\%$  or             $\geq 30\%$              $\geq 40\%$              $\geq 50\%$   
                           NSPS limit            NSPS limit  
                           (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b>	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to $r$
<b>Major &amp; SM sources:</b>		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
“Threshold” pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)

## Administrative Penalty Table - Non-Emissions Air Quality Violations

(Note that the Penalty Matrix is used to augment or adjust some penalties)

Page 1 of 2

Permit Class	Constructing or Operating without a Permit (per major processing system or unit)	Failure to Install required Air Pollution Control Equipment (per emission unit)	Failure to Maintain Process or Air Pollution Control Equipment [The Penalty Matrix is used to assess the severity of any resulting Excess Emissions]	Failure to Comply with a Permitted Operating Parameter	Failure to conduct required Monitoring, Recordkeeping, or Reporting - includes incomplete or inadequate source test reports (per reporting period or per unit-day)	Failure to Comply with a Stop Order or any provision in a Schedule of Compliance
1	\$10,000	\$5,000	\$1,000	\$1,000	Annual Compliance Cert: <b>\$2,000</b> Semi-Annual Monitor. Rept: <b>\$1,000</b> Annual Emission Report: <b>\$1,000</b> Other: <b>\$600</b>	\$10,000
2	\$3,000	\$1,000	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$10,000
2 - General	\$1,000	\$1,000	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$10,000
SAD	\$500 plus \$50 per acre of planned disturbance	n/a	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$5,000
3	<b>800</b> (per facility)	\$600	\$600	\$600	<b>\$600</b> [for major violations, as identified by NAC 445B.281.4]	up to \$5,000
Time Basis (Guideline)	minimum; weekly to monthly (discretionary)	daily	event	per standard or basis of operating parameter	event	daily

# ATTACHMENT 4



NDEP-BAPC PENALTY RECOMMENDATIONS - December 7, 2010

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER	RECOMMENDED PENALTY
1	Lake Tahoe Horizon Casino Resort, Douglas County	NAC445B.275 "Violations: Acts Constituting; notice." For operating without a valid air quality permit and failure to conduct required compliance source testing. Despite several attempts to contact the permittee, in February of 2009 the DEP discovered that the facility had been operating without a valid air quality operating permit and had failed to conduct required compliance source testing. Based on the Penalty Table, operating without a valid permit carries a base penalty of \$3,000. Because the violation occurred over a 2 year period and involved the operation of 2 units the base penalty was multiplied by 4. Failure to conduct required compliance source testing carries a base penalty of \$600. Although the violation occurred over a 2 year period and involved the operation of 2 units failure to conduct compliance source testing is capped at \$10,000. Horizon was issued the same violation within the last five years, resulting in an additional 155% to the \$10,000 penalty for a total of \$25,500. The DEP is recommending a penalty of \$38,100.	2232 & 2252	\$38,100
2	Eagle Peak, Nye County	NAC445B.275 "Violations: Acts Constituting; notice." For failure to install required air pollution control equipment and exceeding permitted emission limits. On May 12, 2010 a DEP compliance officer conducted an inspection of the crushing, screening and asphalt equipment located in Nye County. During the inspection the officer observed that the equipment did not have the required air pollution controls installed and visible emissions in excess of permitted emission limits. Based on the Penalty Table, failure to operate required air pollution controls carries a base penalty of \$1,000 per system. There were 20 units which did not have the required air pollution controls installed for a penalty of \$20,000. An exceedance of a permitted emission limit carries a base penalty of \$600. There were 3 systems with visible emissions exceedances and all were over 50% opacity multiplying the base penalty by 18, for a total of \$10,800. The DEP is recommending a penalty of \$30,800.	2248, 2249, 2257, & 2258	\$30,800
3	Newmont Nevada Energy Investments, LLC, Eureka County	NAC445B.275 "Violations: Acts Constituting; notice." For exceeding permitted emission limits during a source test. Newmont exceeded permitted emission rates for particulate matter by a factor of 1.83 times the permitted limit. Based on the Penalty Table, the exceedance of a BACT emission limit by a major stationary source carries a base penalty of \$7,500. Applying the Penalty Matrix, exceeding the BACT emission limit by a factor of 1.83 results in a total penalty of \$13,725. The DEP is recommending a penalty of \$13,725.	2226	\$13,725
4	Ames Construction, Inc., Lander County	NAC445B.275 "Violations: Acts Constituting; notice." For operating without a valid air quality permit, exceedance of permitted operating hours and throughput limits and failure to report permit deviations. In April of 2010 Ames submitted to the DEP a Completion of Operation form for COLA 2174. At the time Ames disclosed that they had operated beyond the expiration of the permit. This prompted a records review of the operation. During the records review it was discovered that Ames had exceeded permitted daily hours of operation and throughput limits. Based on the Penalty Table, operating without a valid permit carries a base penalty of \$1,000. Because the violation occurred over a 2 month period the base penalty was multiplied by 2. Failure to comply with permitted operating parameters carries a base penalty of \$600. There were 12 occasions in which permitted daily parameters were exceeded multiplying the base penalty by 12. The first three failures to report the exceedances constitute minor violations carrying a penalty of \$1,750. An additional \$600 was added to the penalty for the remainder of the failures to report. The DEP is recommending a penalty of \$11,550.	2269, 2270, & 2271	\$11,550

# ATTACHMENT 5

SEC Meeting - December 7, 2010  
Compliance and Enforcement Statement

Mr. Chairman, members of the Commission, good morning. For the record, my name is Francisco Vega, Supervisor of the Compliance & Enforcement Branch in the NDEP's Bureau of Air Pollution Control.

The Commission is authorized under the Nevada Revised Statutes to levy administrative penalties for Major violations of state rules and regulations that protect air quality. As explained earlier, Based on a long-standing agreement, the Bureau of Air Pollution Control's Compliance & Enforcement Branch assesses penalties for these violations on behalf of the Commission. The companies listed on today's agenda are aware that the Branch will only be making a penalty recommendation to the Commission, and that the Commission may see fit to adjust a penalty that has been recommended.

I will be making penalty recommendations for four facilities involving ten Notices of Violation on today's agenda.

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- The first penalty assessment on the agenda today involves the Lake Tahoe Horizon Casino Resort. The Horizon operates a hotel and casino in Douglas County, Nevada. On September 16, 2003 the Bureau of Air Pollution Control (or BAPC) issued a Class 2 Air Quality Operating Permit to the Horizon for the operation of 2 boilers.
- On April 28, 2005 Horizon was issued Notice of Alleged Violation (NOAV) No. 1917. NOAV No. 1917 was issued to Horizon for failure to conduct required compliance source testing. Their permit required a compliance source test on each boiler within 180 days of issuance of the permit or approximately March 16, 2004. (\$1,200 fine for violation)
- On March 25, 2008, the NDEP-BAPC sent the Horizon a courtesy letter informing them that their current permit would expire on September 16, 2008.
- As required by their permit, Horizon was to conduct compliance source testing on both boilers at least 90 days prior to the date of expiration of this permit, but no earlier than 365 days from the date of expiration of this permit. Testing should have been conducted no later than June 16, 2008.
- On September 16, 2008, their class 2 permit expired.
- In February 2009 the BAPC attempted to contact the Horizon by telephone to advise them that their permit had expired, and that the Horizon needed to submit an application for a new Class II Air Quality Operating Permit immediately.
- On July 30, 2009 the BAPC visited the Horizon and was only able to meet with facility maintenance staff. Contact information was provided to the facility with the understanding that the matter was very

important. On September 29, 2009 the BAPC visited the facility and again was not able to make contact with personnel that could address the air quality permit issue.

- In early February 2010, a BAPC inspector conducted a web search to try to identify a responsible party. A realty firm contracted by the Horizon to book reservations directed the inspector to the resort's operations manager. The BAPC established contact with the Horizon that afternoon.
- On February 11, 2010 the BAPC met with Horizon personnel to explain that their permit had expired and that an immediate response was required to obtain a new Air Quality Permit. The BAPC received an application for a new Class II Air Quality Operating Permit from the Horizon on March 8, 2010. At the time of submittal, the application did not include the required application fee.
- On March 23, 2010 the BAPC met with representatives of the Horizon to determine the current organizational structure, to obtain information as to what transpired in allowing the permit to expire, and to provide preliminary comments on the recently submitted application.
- Also discussed on March 23, 2010, were the compliance issues and potential violations related to Horizon's failure to obtain a renewal permit and failure to conduct required compliance source testing. Based on the results of the enforcement conference, the BAPC and the Horizon agreed that issuance of NOAV's 2232 and 2252 was warranted. I would like to point out that the representatives in attendance at the March 23, 2010 meeting were the same representatives involved in the 2005 violation issuance (Glen Koehler).

- At the close of the conference the BAPC discussed the bureau's role in penalty assessment and discussed the penalty that would be recommended to the Nevada State Environmental Commission for ratification.
- Based on the Penalty Table, operating without a valid permit carries a base penalty of \$3,000. Because the violation occurred over a 2 year period and involved the operation of 2 units the base penalty was multiplied by 4. Because the Horizon has been issued violations within the last five years a 5% penalty was added, for a total recommended penalty of \$12,600 for NOAV 2232.
- Failure to conduct required compliance source testing carries a base penalty of \$600. Although the violation occurred over a 2 year period and involved the operation of 2 units failure to conduct compliance source testing is capped at \$10,000. Because the facility has been issued the exact same violation within the last five years, an additional 155% was added to the \$10,000 penalty for a total recommended penalty of \$25,500 for NOAV 2252.
- The NDEP-BAPC is recommending a total penalty of \$38,100.

- Penalty Assessment No. 2 involves Eagle Peak Rock and Paving. Eagle Peak Rock & Paving, Inc. (Eagle Peak) operates an aggregate screening and crushing plant as well as asphalt plant south of Beatty in Nye County. The BAPC issued Change of Location Approval No. 2202, based on the application submitted by Eagle Peak, on October 20, 2009.
- On May 12, 2010 a BAPC compliance and enforcement inspector performed an unscheduled inspection of the Eagle Peak facility. During the inspection it was discovered that 20 pollution controls required by the permit were not installed. The inspector also observed and recorded visible emissions in excess of the permitted limits (PF1.014 (54.6%), PF1.016 (71.7%), and PF1.023 (80.2%)).
- On May 18, 2010, the BAPC issued Stop Order 2010-09 ordering Eagle Peak to cease operation of all equipment.
- On May 21, 2010, the BAPC was informed that Eagle Peak had performed and demonstrated compliance with permitted visible emission limits and had installed all required pollution controls. On May 25, 2010, the BAPC rescinded Stop Order No. 2010-09.
- On July 28, 2010 the BAPC held an enforcement conference with Eagle Peak to discuss the four alleged violations and potential penalties. During the conference Eagle Peak admitted to exceeding its permitted opacity limits and failing to install controls. Eagle Peak also provided evidence that controls had been installed and had made the necessary changes to assure that visible emissions do not exceed permitted limits. Based on the information presented and discussed during the conference, the BAPC and Eagle Peak agreed that the issuance of NOAV Nos. 2248, 2249, 2257, and 2258 was warranted.

- At the close of the conference the BAPC discussed the bureau's role in penalty assessment and discussed the penalty that would be recommended to the Nevada State Environmental Commission for ratification.
- The Penalty Table calls for a base penalty of \$1,000 per system for failing to install required air pollution controls. **NOAV No. 2249** was calculated at 20 systems (20 controls) for a total recommended penalty of \$20,000.
- In cases involving emissions violations, the compliance and enforcement branch uses the penalty matrix to adjust the base penalty for the level of non-compliance. **NOAV Nos. 2248, 2257, and 2258** were calculated using a base penalty of \$600 per system per day for failing to comply with a permitted emission limit. However, because all three systems exceeded 50% opacity, based on the penalty matrix a multiplier of six times the base amount was applied. The total penalty for the emission violations, for the three systems, at \$3,600 per system, for one day, was calculated to be \$10,800.
- The NDEP-BAPC recommended a total penalty of \$30,800.



- The third Penalty Assessment involves Newmont Nevada Energy Investments, LLC. Newmont operates the TS Power Plant, in Eureka County, under Class 1 Air Quality Operating Permit to Construct AP4911-1349.
  - In April of 2009, as required by their permit, Newmont conducted compliance source testing of its coal fired boiler (System 1). The final report for the April 2009 test indicated that the boiler had exceeded its 0.012 lb/MMBtu Best Available Control Technology, or BACT, limit for PM10 by a factor of 1.83.
  - An investigation conducted by Newmont led to the discovery that a number of broken bags in the boiler's baghouse.
  - Based on the information presented and discussed during communication between the BAPC and Newmont, it was agreed upon that the issuance of NOAV No. 2226 was warranted.
  - The Penalty Table calls for a base penalty of \$7,500 for the exceedance of a BACT limit by a Class 1 Source. Applying the Penalty Matrix, exceeding the limit by a factor of 1.83 results in multiplying the base penalty by 1.83. The BAPC is recommending a total penalty of \$13,725.
-

- The final Penalty Assessment involves Ames Construction. Ames operated an aggregate and concrete batch plant in Lander County, Nevada under Class II General Air Quality Operating Permit AP1442-0138.02 and Change of Location Approval (COLA) #2174. COLA 2174 was issued by the BAPC on November 5, 2008.
  - On February 19, 2009, the NDEP-BAPC received notification that Ames had begun work under COLA #2174.
  - On February 19, 2010, COLA #2174 expired.
  - On April 28, 2010 NDEP-BAPC received a Completion of Operations report from Ames for COLA 2174. Accompanying the Completion of Operations report was a cover letter stating that the concrete batch plant had operated beyond the permit expiration date. This discovery prompted a records review by the BAPC. During the records review, it was discovered that Ames had operated under COLA 2174 from February 19, 2009 (submitted start-up form) to April 20, 2010 (submitted completion form), sixty one (61) days beyond the expiration of the permit. It was also discovered during the records review that twelve (12) exceedances of daily hours of operation and production throughput had occurred for the Concrete Batch Plant. These exceedances were never reported to the NDEP-BAPC.
  - An enforcement conference between the BAPC and representatives from Ames was held on September 2, 2010. Ames provided additional information regarding the circumstances surrounding the concrete batch plant operating beyond the permitted time limit and the hours of operation and total throughput exceedances. Due to circumstances beyond the control of Ames (on-going litigation between

Barrick Cortez and the Western Shoshone Tribes), the project start date was pushed back and delayed several times after initial startup of the COLA. This resulted in the COLA running over the 1 year time limit. However, once Ames discovered that they had run over their permitted time limit they immediately shut the batch plant down and bought concrete to finish the job, which extended for 1 month after they shut their batch plant down. In all instances, Ames realized their mistakes and stated that they should have contacted the BAPC for direction on how to proceed in these situations.

➤ Based on the information presented and discussed during the September 2 enforcement conference, the BAPC and Ames concluded that the issuance of NOAV Nos. 2269 - 2271 was warranted. At the close of the conference the BAPC discussed the bureau's role in penalty assessment and discussed the penalty that would be recommended to the Nevada State Environmental Commission for ratification.

➤ Based on the Penalty Table, operating without a valid air quality operating permit carries a base penalty of \$1,000. Because the violation occurred over a two month period, the recommended penalty for NOAV 2269 is \$2,000.

➤ NOAV 2270 was issued for failing to report operational exceedances. The first failures to report are considered minor violations carrying a total penalty of \$1,750. The subsequent violations are considered major violations and are subject to the Penalty Table. According to the Penalty Table, failure to report carries a base penalty of \$600. The total recommended penalty for NOAV 2270 is \$2,350.

- Based on the Penalty Table, failure to comply with a permitted operational limit carries a base penalty of \$600. Because there were twelve occurrences in which the hours of operation or throughput limits were exceeded, the base penalty was multiplied by 12 for a total recommended penalty of \$7,200.
  
  - In summary, the total penalty recommended for NOAV Nos. 2269 - 2271 totals \$11,550.
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# ATTACHMENT 6

## **Arsenic Exemption *Extensions* Before the State Environmental Commission (SEC)**

**December 7, 2010**

Background: An exemption is an administrative tool allowed under the federal Safe Drinking Water Act and Nevada law. Exemptions can be used to grant water systems additional time to acquire financial and technical assistance to meet drinking water standards. The Nevada Division of Environmental Protection (NDEP), Bureau of Safe Drinking Water (BSDW) has worked with the State Environmental Commission (SEC) to exercise the exemption regulations for the revised arsenic standard, also known as the Arsenic Rule.

The revised arsenic standard of 10 parts per billion (ppb) was enacted on January 22, 2001 and became enforceable on January 23, 2006. The old standard of 50 ppb had been in place for more than 60 years. In 2006 and 2007 the SEC granted exemptions to 64 water systems; which provided them three additional years, until January 23, 2009, to comply with the new arsenic standard. In late 2008 and early 2009, the SEC evaluated extension eligibility criteria and subsequent recommendations from the BSDW and granted 34 water systems an additional 2-year extension to their original exemption. Of the 34 water systems with extended exemptions, 3 more water systems have since become compliant.

Water systems that have not yet achieved compliance *may* receive another extension of time to an exemption extension. According to state and federal regulations, systems meeting certain criteria may be eligible for up to three, 2-year extensions to an original exemption. The systems the SEC will be considering are on their second round of extensions.

To assist in the exemption extension eligibility determination in November 2008, the NDEP carefully considered relevant regulations and guidance documents to establish four screening criteria and presented the criteria to the SEC as part of the extension process at that time. The NDEP is not proposing any changes to the criteria established in 2008, and current extension recommendations follow that work. Water systems that do not meet these criteria are not considered by the NDEP to be eligible for an extension

recommendation. The Agency's current recommendations to the SEC reflect the following:

- ◆ A population threshold is found in Nevada Administrative Code (NAC) 445A.490.5. A water system may qualify for up to three additional two-year extensions if it serves a population of less than 3,300.
- ◆ NAC 445A.490.5 also allows that, "...an exemption ... may be renewed ... if the public water system establishes that it is taking all practicable steps to meet the requirements of [regulatory criteria used for the original exemption]". The NDEP has worked with each exempted public water system to gauge their progress in taking "all practicable steps" and has used this information in its recommendations for exemption extensions to the SEC.
- ◆ Systems recommended for extensions in December 2010 have an arsenic concentration less than, or equal to, 25 ppb. Additional discussion on the basis for this concentration criterion is included below.
- ◆ Nevada Revised Statute (NRS) 445A.935 requires that a supplier of water notify all users of the water system of the time and place for the hearing on their proposed exemption from the drinking water regulations. This step was a clear requirement for all 64 systems who received original exemptions in 2006 and 2007. The NDEP believes that the intent of this Statute is to provide appropriate public notice to water system customers of the quality of their water supply and other circumstances surrounding their water system's regulatory compliance status; as well as provide customers with an opportunity to participate in the public process. Likewise, in 2008 and again in 2010, the NDEP required public notice be sent to the customers of all 34 exempted water systems regarding the NDEP recommendation for their system and fact that the SEC will contemplate granting exemption extensions for an additional two years, or denying them based on concentration or lack of progress.

The concentration-based extension criterion is based in public health protection. While the intent of granting exemptions is to address the needs of economically challenged systems by providing additional time to achieve compliance, the granting of exemptions requires a determination that the exemption "will not result in an unreasonable risk to health" (NAC 445A.489). To aid in this determination relative to extensions, the NDEP utilized the *U.S. EPA Implementation Guidance for the Arsenic Rule, Appendix G, "Exemptions & the Arsenic Rule"* (August, 2002).

This Guidance documents an approach that helps to determine what does *not* constitute an unreasonable risk to health, rather than what does. The approach bases the total length of an exemption on the exposure concentration of arsenic delivered to the consumer. Table 1 depicts various concentrations of arsenic in drinking water and recommendations for the total time to comply with the revised standard. These recommendations are based on a formula derived by the US EPA and consider the total time of exposure to an arsenic concentration in excess of the revised standard.

**Table 1: Exemption & Extension Eligibility Recommendations <sup>(1)</sup>**

System Population Served	Total Time to Comply After Rule Revision- Jan 22, 2001	Exemption Periods Available	Recommended arsenic concentration criteria for granting an exemption or an extension			
			>30 ppb □50 ppb <sup>(2)</sup>	>25 ppb □30 ppb	>20 ppb □25 ppb	>10 ppb □20 ppb
>3,300 persons	8 years	3 year Exemption (to Jan 23, 2009)	Granted	Granted	Granted	Granted
<3,300 persons	8 years	3 year Exemption (to Jan 23, 2009)	Granted	Granted	Granted	Granted
	10 years	1 <sup>st</sup> Extension (to Jan 23, 2011)	Not Elig.	Granted	Granted	Granted
	12 years	2 <sup>nd</sup> Extension (to Jan 23, 2013)	Not Elig.	Not Elig.	Eligible	Eligible
	14 years	3 <sup>rd</sup> Extension (to Jan 23, 2015)	Not Elig.	Not Elig.	Not Elig.	Eligible

(1) Adapted from U.S. EPA Implementation Guidance for the Arsenic Rule, Appendix G-15, August 2002

(2) U.S. EPA's recommendation was 35 ppb, Nevada chose the old standard of 50 ppb.

The timeframes and recommendations in Table 1 reveal the intent to address the systems with the highest exposure concentrations, and highest increased risk to health, first. Likewise, the NDEP selected the concentration threshold of 25 ppb as the next qualifying tier and recommends the SEC continue to consider this stair-stepped approach as a factor in deciding to grant exemption extensions.



NDEP Recommendations: The NDEP recommends 26 water systems be granted extensions for the next 2-year period, expiring January 23, 2013. The list of water systems in each category (in compliance, recommended, and not recommended) is attached and was published on the SEC webpage for the December 7, 2010 hearing at <http://sec.nv.gov/>.

Extensions granted by the SEC will include an updated list of milestones that the systems will have to achieve during the extension period. For 2010, the NDEP has drafted two versions of this document based on whether a system delivers water with an arsenic concentration of less than, or more than, 20 ppb. The NDEP's recommended approach of having two different extension agreements resulted from the difference in activities that the two types of water systems should be required to complete in the next two years. Systems with arsenic concentrations greater than 20 ppb, which will not be recommended for a third extension, are expected to be compliant by January 23, 2013; and the milestones in the SEC extension agreement reflect this. Systems with arsenic concentrations less than or equal to 20 ppb, which may be eligible for one final extension, will be expected to have their compliance plan determined with an appropriate schedule in place to ensure compliance by January 23, 2015. This approach will permit the NDEP to have clear expectations and be better able to gauge a water system's progress in taking "all practicable steps" to achieve compliance.

The proper draft of the respective agreements was provided to each system that the NDEP is recommending for an extension. These draft documents are attached and were published on the SEC webpage for the December 7, 2010 hearing at <http://sec.nv.gov/>.

According to State and Federal laws and regulations, systems that are currently operating under an Arsenic Rule compliance exemption until January 23, 2011, that do not receive an extension and are not in compliance on that date will be in violation of such regulations on January 24, 2011. The NDEP will pursue a Finding of Alleged Violation (FOAV) and Administrative Order (AO) or Administrative Order on Consent (AOC) for each facility in violation of the arsenic standard. The attached summary status list includes 5 systems that are not considered by the NDEP to be eligible for extensions based on a concentration greater than 25 ppb or lack of adequate progress toward compliance. The NDEP believes that the first 2 systems on the list are nearing compliance and therefore, it is expected that the remaining 3 systems will require an FOAV and AO/AOC to ensure compliance.

**NDEP Bureau of Safe Drinking Water - List of Water Systems with Arsenic Exemptions and their Status for Extension Recommendations to the State Environmental Commission - December 7, 2010**

	COUNTY	PWS ID#	PUBLIC WATER SYSTEM NAME	ARSENIC (ppb)	POP	DATE OF ORIGINAL EXEMPTION
<b>Systems Achieving Compliance Since December 2008 SEC Hearing</b>						
1	LI	NV0000013	CALIENTE PUBLIC UTILITIES	17	1,500	September 6th, 2006
2	MI	NV0000897	SCHURZ ELEMENTARY SCHOOL	14	320	December 4th, 2007
3	WA	NV0001086	SKY RANCH WATER SERVICE CORPORATION	14	2,030	September 6th, 2006
<b>Systems Eligible and Recommended for Extension - Arsenic Concentration &gt; 20 ppb</b>						
4	CH	NV0000047	DELUXE MHP	24	37	December 4th, 2007
5	LA	NV0000008	LA CO SEWER AND WATER DIST 1 BM	24	3,026	May 24th, 2007
6	LY	NV0000223	SILVER SPRINGS MUTUAL WATER COMPANY	25	3,000	September 6th, 2006
7	NY	NV0000009	BEATTY WATER AND SANITATION DISTRICT	24	1,100	September 6th, 2006
<b>Systems Eligible and Recommended for Extension - Arsenic Concentration &lt;= 20 ppb</b>						
8	CH	NV0000061	TOLAS PARK MHP	20	54	May 24th, 2007
9	CH	NV0000903	CMC STEEL FABRICATORS DBA CMC JOIST	16	400	September 7th, 2007
10	CH	NV0000052	OK MOBILE HOME PARK	15	90	September 6th, 2006
11	CL	NV0002501	NPS COTTONWOOD COVE	15	1,354	September 6th, 2006
12	CL	NV0000219	SEARCHLIGHT WATER COMPANY	11	760	September 6th, 2006
13	DO	NV0000887	SUNRISE ESTATES	17	91	September 6th, 2006
14	EU	NV0000043	CRESCENT VALLEY WATER SYSTEM	12	350	May 24th, 2007
15	EU	NV0002573	DEVILS GATE WATER SYSTEM GID 2	12	70	May 24th, 2007
16	HU	NV0005069	HUMBOLDT CONSERVATION CAMP NDOP	15	140	September 6th, 2006
17	HU	NV0000907	LONE TREE MINE	15	150	May 24th, 2007
18	HU	NV0000162	MC DERMITT WATER SYSTEM	19	200	December 4th, 2007
19	HU	NV0002528	TURQUOISE RIDGE JOINT VENTURE	20	250	September 6th, 2006
20	LA	NV0000006	LA CO SEWER AND WATER DIST 2 AUSTIN	14	350	May 24th, 2007
21	LI	NV0000185	PANACA FARMSTEAD WATER ASSOCIATION	20	800	May 24th, 2007
22	LY	NV0000242	WEED HEIGHTS DEVELOPMENT	18	500	May 24th, 2007
23	LY	NV0000255	YERINGTON CITY OF	19	2,900	September 6th, 2006
24	NY	NV0000237	TONOPAH PUBLIC UTILITIES	13	2,600	September 6th, 2006
25	ST	NV0000878	MASTERFOODS USA	15	140	December 4th, 2007
26	WA	NV0000896	BRISTLECONE FAMILY RESOURCES	12	25	September 6th, 2006
27	WA	NV0004021	SILVER KNOLLS MUTUAL WATER COMPANY	13	120	May 24th, 2007
28	WA	NV0003000	VERDI SCHOOL	13	250	September 6th, 2006
<b>System Recommended for Extension, But No Proof of Public Notice</b>						
29	LY	NV0002595	Silver Springs Conservation Camp NDOP	19	144	September 6th, 2006
<b>Systems Not Recommended - Concentration &gt; 25 ppb</b>						
30	CH	NV0003068	CARSON RIVER ESTATES	28	90	December 4th, 2007
31	MI	NV0000357	HAWTHORNE ARMY AMMO DEPOT	30	300	May 24th, 2007
32	NY	NV0005028	SHOSHONE ESTATES WATER COMPANY	30	240	December 4th, 2007
			(System is also not taking "all practicable steps")			
33	WA	NV0000193	CRYSTAL TP	27	80	September 6th, 2006
<b>Systems Not Recommended - Not Taking "All Practicable Steps" to Achieve Compliance</b>						
34	CH	NV0000058	WILDES MANOR	20	70	December 4th, 2007

Updated 11/4/2010

# NEVADA STATE ENVIRONMENTAL COMMISSION

## ARSENIC EXEMPTION EXTENSION

IN THE MATTER OF THE REQUEST )  
OF THE )  
<< PWS NAME >> )  
FOR AN EXTENSION OF AN )  
EXEMPTION FROM )  
REGULATIONS GOVERNING PUBLIC )  
WATER SYSTEMS, ARSENIC )

### FINDINGS OF FACT

The above entitled matter came before the Nevada State Environmental Commission, hereafter known as the Commission, at a duly noticed public hearing on December 7<sup>th</sup>, 2010. The Commission, having heard the presentation from staff of the Nevada Division of Environmental Protection (NDEP) recommending approval of the extension and having extended an opportunity to the public to be heard, finds as follows:

- The <<PWS NAME >> public water system, hereafter known as the System, was in operation prior to January 23, 2006, the effective date of the revised arsenic standard of 10 parts per billion (ppb).
- The System has a source or sources of drinking water that exceed the revised standard.
- The System was granted an exemption on <<DATE OF EXEMP >>.

The Safe Drinking Water Act, resulting Federal regulations and guidance, and the regulations of the Commission provide for an extension of the exemption if the following conditions exist:

1. The System's population does not exceed 3,300 and arsenic levels are equal to or less than 25 parts per billion (ppb).
2. The System has complied with the exemption public notice requirements.
3. The System is taking practicable steps to become compliant.

Review of the exemption compliance milestones by NDEP staff has found the System meets the above stated conditions. Furthermore, NDEP staff has found that the System has established that it needs financial resources to comply with the maximum contaminant level and has either entered into a financial assistance agreement to make capital improvements or has shown that financial assistance or resources are reasonably likely to be available within the period of time that the exemption will be in effect. In consideration of the above, the System is seeking an extension to allow two additional years to comply, by January 23, 2013.

## CONCLUSIONS

This matter is properly before the Commission pursuant to Nevada Administrative Code (NAC) 445A.489, and the determination of this matter is properly within the subject matter jurisdiction of the Commission.

The Commission specifically finds that the System was in operation prior to January 23, 2006, is unable to comply with the regulation due to compelling factors and no unreasonable risk to public health will result if the extension is granted. The Commission, having considered the relative interests of first, the public and second, the System, being fully advised and by vote, does grant the exemption until January 23, 2013.

## DECISION

It is the decision of the Commission to grant an extension of the System's exemption, effective through January 23, 2013, subject to the following schedule of compliance:

- 1) **By January 21<sup>st</sup>, 2011**, the System shall provide public notice that the extension was granted on December 7<sup>th</sup>, 2010, and provide proof of posting of such public notice to the Nevada Division of Environmental Protection, Bureau of Safe Drinking Water (NDEP-BSDW) per NRS 445A.940. *Public notice shall be provided annually while the extension is in effect and proof of posting shall be provided to the NDEP-BSDW within 10 days completion.*
- 2) **By May 1, 2012**, the System shall have:
  - a. Investigated and secured, to the extent that funds are available, all sources of financial assistance necessary to complete the project;
  - b. Completed an evaluation of compliance alternatives, including retaining the services of an engineer and conducting pilot testing, as needed, to select and design a final compliance option; and
  - c. Installed, tested and have in full operation a treatment system or other compliance option capable of producing drinking water that meets the arsenic standard of 10 parts per billion (ppb).
- 3) **By January 23, 2013**, the System shall demonstrate that the Running Annual Average of arsenic data from the System's delivered water is in compliance with the standard of 10 ppb.
- 4) The System shall provide quarterly progress reports to NDEP-BSDW by January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> and October 10<sup>th</sup> of each year of the extension period; and
- 5) The System shall continue to monitor and report quarterly for arsenic.

No further extensions of time to become compliant will be recommended by NDEP-BSDW staff to the Commission.

Date: \_\_\_\_\_

\_\_\_\_\_  
Eugene Gans, Chairman  
Nevada State Environmental Commission

# NEVADA STATE ENVIRONMENTAL COMMISSION

## ARSENIC EXEMPTION EXTENSION

IN THE MATTER OF THE REQUEST )  
OF THE )  
<< PWS NAME >> )  
FOR AN EXTENSION OF AN )  
EXEMPTION FROM )  
REGULATIONS GOVERNING PUBLIC )  
WATER SYSTEMS, ARSENIC )

### FINDINGS OF FACT

The above entitled matter came before the Nevada State Environmental Commission, hereafter known as the Commission, at a duly noticed public hearing on December 7<sup>th</sup>, 2010. The Commission, having heard the presentation from staff of the Nevada Division of Environmental Protection (NDEP) recommending approval of the extension and having extended an opportunity to the public to be heard, finds as follows:

- The <<PWS NAME >> public water system, hereafter known as the System, was in operation prior to January 23, 2006, the effective date of the revised arsenic standard of 10 parts per billion (ppb).
- The System has a source or sources of drinking water that exceed the revised standard.
- The System was granted an exemption on <<DATE OF EXEMP >>.

The Safe Drinking Water Act, resulting Federal regulations and guidance, and the regulations of the Commission provide for an extension of the exemption if the following conditions exist:

1. The System's population does not exceed 3,300 and arsenic levels are equal to or less than 20 parts per billion (ppb).
2. The System has complied with the exemption public notice requirements.
3. The System is taking practicable steps to become compliant.

Review of the exemption compliance milestones by NDEP staff has found the System meets the above stated conditions. Furthermore, NDEP staff has found that the System has established that it needs financial resources to comply with the maximum contaminant level and has either entered into a financial assistance agreement to make capital improvements or has shown that financial assistance or resources are reasonably likely to be available within the period of time that the exemption will be in effect. In consideration of the above, the System is seeking an extension to allow two additional years to comply, by January 23, 2013.

## CONCLUSIONS

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## DECISION

It is the decision of the Commission to grant an extension of the System's exemption, effective through January 23, 2013, subject to the following schedule of compliance:

- 1) **By January 21<sup>st</sup>, 2011**, the System shall provide public notice that the extension was granted on December 7<sup>th</sup>, 2010, and provide proof of posting of such public notice to the Nevada Division of Environmental Protection, Bureau of Safe Drinking Water (NDEP-BSDW) per NRS 445A.940. *Public notice shall be provided annually while the extension is in effect and proof of posting shall be provided to the NDEP-BSDW within 10 days completion.*
- 2) **By January 23, 2013** If not yet completed, the System shall:
  - a. Investigate and secure, to the extent that funds are available, all sources of financial assistance necessary to complete the project;
  - b. Complete an evaluation of compliance alternatives, including retaining the services of an engineer and conducting pilot testing, as needed, to select and design a final compliance option; and
  - c. Have plans in place to install, test and have in full operation a treatment system or other compliance option capable of producing drinking water that meets the arsenic standard of 10 parts per billion (ppb) by January 23, 2015.
- 3) The System shall provide quarterly progress reports to NDEP-BSDW by January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> and October 10<sup>th</sup> of each year of the extension period; and
- 4) The System shall continue to monitor and report quarterly for arsenic to the NDEP-BSDW.

Systems serving a population less than 3,300 and with arsenic compliance concentrations less than or equal to 20 ppb *may* qualify for one more two-year extension if the System demonstrates significant progress during this extension, and an additional extension is approved by the State Environmental Commission.

Date: \_\_\_\_\_

\_\_\_\_\_  
Eugene Gans, Chairman  
Nevada State Environmental Commission

# ATTACHMENT 7

# NDEP Bureau of Water Quality Planning

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Revisions to  
Nevada's Water Quality Standards

Petition R129-10 Class D Waters

December 7, 2010

John Heggeness  
Nevada Division of Environmental Protection  
Bureau of Water Quality Planning  
Water Quality Standards Program

1

## Clarification of Petition Numbering

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- Sections within this petition refer back to  
Petition R160-06
- Section 1      Section 11 of LCB File No.  
R-160-06.....

2



# Water Quality Standards

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## KEY ELEMENTS - of Water Quality Standards

- 1) Designated beneficial uses
- 2) Criteria to protect beneficial use
- 3) Antidegradation provision

3

# Nevada Water Quality Standards

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## 1) Beneficial Uses, NAC 445A.122

- Municipal or domestic supply
- Irrigation
- Watering livestock
- Propagation of aquatic life (cold water, warm water fish)
- Propagation of wildlife
- Industrial Supply
- Waters of extraordinary ecological or aesthetic value (Lake Tahoe)
- Recreation involving contact with the water (swimming)
- Recreation not involving contact with the water (boating)

4

## Nevada Water Quality Standards

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### 2) Criteria for water quality

- Numeric values which protect uses
- Other criteria may be used
- Natural conditions

5

### 3) Antidegradation

#### ■ NRS 445A.565

"Any surface waters of the state whose quality is higher than the applicable standards ... must be maintained in their higher quality. No discharges of waste may be made which will result in lowering the quality of these waters unless it has been demonstrated to the commission that the lower quality is justifiable because of economic or social considerations."

6

## Public Workshops

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- ◆ Carson City – May 13, 2010
- ◆ Ely – May 20, 2010
- ◆ Elko – May 21, 2010

7

## Class D waters

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- NAC 445A.127
- Class D Waters have Non-contact Recreation do not have Contact Recreation (swimmable)
- USEPA requires a periodic review of waters that do not have the contact recreation goal as a beneficial use.

8

## Class D waters

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- Assess the waterbodies to establish if it is appropriate to add contact recreation as a use
  - ◆ If so, add contact recreation as a use,
  - ◆ Add appropriate criteria
    - ◆ Contact Recreation
    - ◆ Non-contact Recreation

9

## Class D waters

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- Class D waters
  - ◆ Stillwater Marsh (Stillwater Point Reservoir)
  - ◆ Quinn River (The Slough)
  - ◆ Humboldt River to and including the Humboldt Sink
  - ◆ Lagomarsino Creek
  - ◆ Steamboat Creek
  - ◆ Gleason Creek
  - ◆ Murry Creek

10

## Revisions to Class D waters

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- Add Contact Recreation to:
  - ◆ Lagomarsino Creek
  - ◆ Steamboat Creek
  - ◆ **Murry Creek – Murry Creek above Crawford Street**
  - ◆ **Lower Humboldt River**

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## Revisions to Class D waters

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- Keep Non-contact Recreation (Do not add Contact Recreation to):
  - ◆ Gleason Creek
  - ◆ Quinn River (the Slough)
  - ◆ Stillwater Marsh (Stillwater Point Reservoir)
  - ◆ **Humboldt Sink**
  - ◆ **Murry Creek – below Crawford Street**

12

## Recreation – Bacterial Standards

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- The bacteria E. Coli is used as an indicator of bacterial contamination
  
- For waters with Contact Recreation add:
  - ◆  $AGM \leq 126$  No./100 ml, and
  - ◆  $S.V. \leq 576$  No./100 ml
  
- For the waters with Non-contact Recreation add:
  - ◆  $AGM \leq 630$  No./100 ml

13

## Tribal Waters

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- Quinn River (the Slough) flows through the Fort McDermitt Indian Reservation
  
- Tribal Waters
  - ◆ In the CWA Tribes are treated as states
  - ◆ WQS adopted by Nevada for waters on Tribal lands are not applicable
  - ◆ Remove Tribal waters from NAC

14

## Tribal Waters - Quinn River

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- Three Reaches on Fort McDermitt Indian Reservation
- Remove one reach entirely on tribal land
- Add to The Slough and Quinn River, East and South Forks  
*“except for the length of the river within the exterior borders of the Fort McDermitt Indian Reservation”*

15

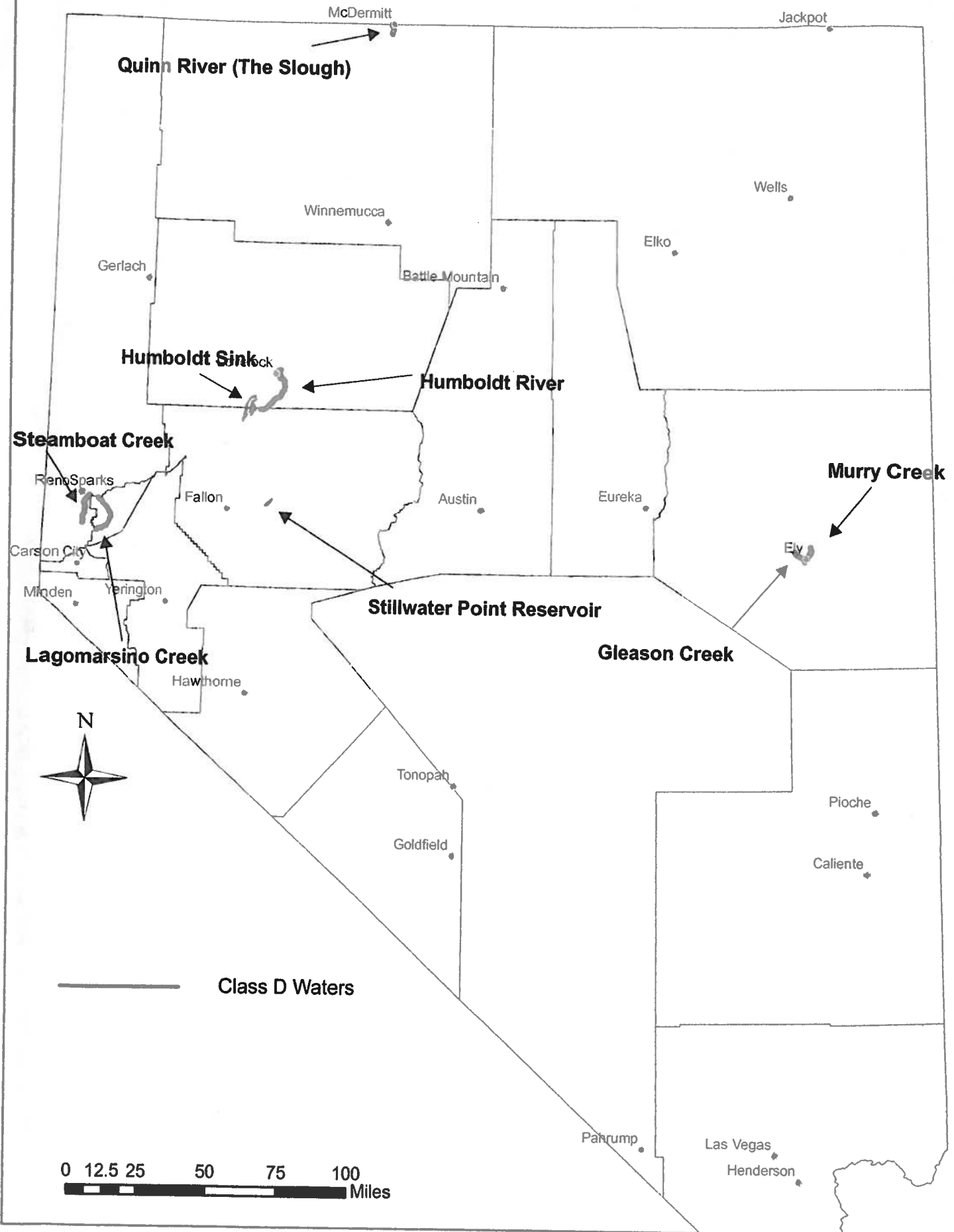
## Class D waters

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Questions on Petition R129-10?

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# Nevada Class D Waters





# ATTACHMENT 8

**LCB File No. R115-10 ERRATUM**

The following minor correction to the language in Section 3 is requested. Language to be deleted appears with strikethrough and new language is underlined.

**Sec. 3. 1. *An intended use plan must be prepared by the Division which describes how all money deposited into the fund will be used. The intended use plan must include a description of:***

***(a) The short- and long-term goals and objectives of the fund;***

***(b) The types of activities to receive financial assistance from the fund, including eligible categories of costs, the types of financial assistance to be provided by the fund and the terms for the various types of financial assistance provided by the fund;***

***(c) The criteria and method used for the distribution of money from the fund; and***

***(d) The criteria and method used for selecting treatment works or pollution control projects to be funded as eligible activities for nonpoint sources.***

***2. An intended use plan must provide assurances and specific proposals regarding the manner by which the State intends to meet the requirements of the Act.***

***3. An intended use plan may be amended during the year pursuant to the provisions established in the intended use plan if the ~~project has previously been identified through~~ amended plan follows the public participation process as set forth in section 4 of this regulation.***

# ATTACHMENT 9

## TESTIMONY

Good morning Mr. Chairman, members of the Commission

My name is Adele Malone, Planning & Modeling Branch Supervisor, BAQP

### **WHAT: Agenda item 8) LCB File No. T011-10**

*Background* – T011-10 amends just one section of the air program’s operating permit provisions, NAC 445B.3457. The amendments are in response to U.S. EPA comments on the approvability of the agency’s air permitting provisions into Nevada’s applicable State Implementation Plan or ASIP. You may recall, the NDEP has been working with EPA Region IX to make Nevada’s ASIP more consistent with the Nevada Administrative Code. This effort has been going on now for over a decade. In February 2005, the NDEP submitted a major update of the ASIP to EPA in an effort to replace outdated provisions that hale from the ‘70s and early ‘80s. EPA has acted on all of the 2005 update, approving/updating a bit over 100 of our regulations (71 definitions; 31 general provisions), but disapproving most (87 – 42 definitions; 45 provisions) of our permitting provisions because of issues related to just 10 regulations. EPA considers the permitting provisions that they disapproved as a package of non-separable regulations and they argue that singling out certain regulations for approval would change the overall intent of the package.

After discussions over the outstanding issues, EPA agreed to accept some of the provisions as submitted and we agreed to revise several of the regulations to better align them with federal requirements. The NDEP has brought a number of SIP related NAC amendments to the SEC over the past year or two to resolve the issues; I presented some at the October Hearing. Today’s amendment is hopefully

the last amendment necessary in order to get the bulk of our permitting provisions approved into the ASIP.

The ASIP is the State's plan to achieve and maintain the national primary and secondary ambient air quality standards. Filing this plan is a federal requirement and should represent the portion of the Nevada program that is federally-enforceable.

### **PUBLIC PROCESS:**

Because the update of the regulatory element of Nevada's ASIP has required revisions to Nevada's air pollution control regulations to make them compatible with federal requirements, and thus approvable by EPA, back in 2002 – maybe earlier – we established what we call the “ASIP Working Group.” This group includes representatives of the affected industries and other interested parties. Throughout the effort to update the ASIP, we have involved this Working Group in the development of revisions to the NAC to be sure we had consensus from industry and other interested parties before moving forward with proposed amendments. Prior to the public workshop for T011-10, we circulated the proposal to the ASIP Working Group and had a conference call to discuss the amendments. We received and responded to several comments; no changes to the amendments resulted. A public workshop for the proposed regulation was held in Carson City on November 16<sup>th</sup> [8 attendees/5 facilities]. There were no adverse comments. Basically, the regulated industry recognizes the need for these changes and appreciates NDEP's effort to keep the changes from impacting their application processing timeline and fees.

**SUMMARY OF CHANGES – So, let’s turn to the actual proposed changes.**

NAC 445B.3457 deals with the Director’s action on Class II permit applications and public notice (PN) requirements for Class II permit applications. I plan to summarize what the changes to this regulation accomplish and not go through the revisions line-by-line. However, if you like, I would be glad to go line-by-line or discuss specific language in the amendment after I give you the summary of changes.

Looking at the regulation itself, the revised sections include:

- Subsections 3 and 4 – which deal with the application processing timeline and info Director must consider in deciding to issue or deny;
- Subsection 5 – establishes the criteria for deciding what must go to PN;
- Subsection 6 – describes the PN process;
- Subsection 7 – describes the contents of the notice; and
- Subsection 8 – deals with procedural aspects of public comments.

A significant revision to this regulation deals with the criteria for determining when an application must go to PN. We have PN requirements for Class II sources in the existing regulations, but EPA has commented that they are too subjective and not approvable into our SIP. EPA needs quantifiable criteria for determining when an application must go to PN. And so, these amendments provide very specific criteria for deciding which applications must be PN’d.

Next, the existing regulation has a 60-day timeline for issuing or denying a permit once the application is deemed complete, unless it is subject to PN. If PN is required, the timeline extends beyond 60 days by at least 30 – the required PN

period – and up to 60 additional days. Because it is important to industry to have their applications processed as quickly as possible, we decided not only to maintain the 60-day timeline for applications that don't require PN, but also to fit the PN process into those 60 days. So, all applications for a Class II operating permit will be acted on within 60 days.

In order to fit PN into the 60-day timeline, when PN is required, we are proposing to make the permit application and the Director's preliminary determination to issue or deny the permit available 15 days after the official date of submittal. This begins the 30-day PN period. While PN is occurring, we will develop the permit itself. At the end of the PN period, we have 15 days to review comments and revise the permit if necessary before it is issued.

We are also revising the method of PN – going to a web-based notice with hard copies available at NDEP and at a local library in the area where the source is located. This will keep costs down for both the agency and sources.

These amendments have been developed through extensive negotiations with EPA and discussions with industry. The proposed PN process follows federal requirements very closely ([Title 40 of the CFR, Part 51, sections 160-161](#)) – while being no more stringent than federal rule.

**RECOMMENDED ACTION:**

In conclusion, the Division recommends that the Commission adopt regulation T011-10 as presented today. I'd be happy to answer any questions you may have.