

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

Meeting of December 9, 2009, 10:30 AM

Nevada Department of Wildlife
1100 Valley Road
Reno NV

Members Present:

Lewis Dodgion, Chairman
Alan Coyner, Vice Chairman
Pete Anderson
Kenneth Mayer
Tracy Taylor
(Eugene) Jim Gans
Kathryn Landreth
Frances Barron
Harry Shull

Members Absent:

Tony Lesperance
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 10:35 am by Chairman Dodgion who declared there was a quorum. The Chairman asked Mr. John Walker if there were any changes to the agenda. Mr. Walker replied that the October 6, 2009 SEC hearing minutes could not be approved at this hearing because there was not a quorum of attendees present who attended the October hearing.

1) Approval of minutes from the June 17, 2009 SEC hearing - Action Item

Mr. Gans moved to approve the minutes of the June 17, 2009 hearing as written. Mr. Coyner seconded and the motion passed.

Approval of the October 6, 2009 minutes was postponed to the next SEC hearing.

**2) Settlement Agreements, Air Quality Violations - Action Item
(The Settlement Agreements table is contained in ATTACHMENT 1)**

Mr. Larry Kennedy, Supervisor of the Compliance and Enforcement Branch of the NDEP Bureau of Air Pollution Control (BAPC) presented this agenda item beginning with a brief explanation of the Commission's authority under Nevada's Revised Statutes to levy administrative penalties.

Mr. Kennedy explained 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. Based on a long-standing agreement, the Bureau's Compliance & Enforcement Branch assesses penalties for these violations on the behalf of the Commission. The companies listed on today's agenda are aware that the BAPC acts as the Commission's agent in negotiating Settlements, and the Commission may see fit to adjust an assessed penalty.

Mr. Kennedy provided information on the six Settlement Agreements on the agenda which he said involved fourteen Notices of Violation. (For the complete prepared statement of Mr. Kennedy, see [ATTACHMENT 2](#)).

Before discussing the agreements, Mr. Kennedy made some general remarks: road construction companies account for five of these agreements, exceeding the opacity limit for the visibility of emissions from a vent or a stack was the most common violation, three violations were issued for exceeding the limits established for production throughputs or daily hours of operation, and companies expressed similar reasons for having committed the violations, centering on layoffs made in response to the 2008 economic downturn.

Penalties were assessed using the Administrative Penalty Table and Mr. Kennedy stated that each company had signed off on the proposed penalties. Mr. Kennedy provided details and information on individual violations and penalty assessment calculations. Specific Settlement Agreements submitted for approval:

- Frehner Construction Company - operates aggregate processing and hot mix asphalt plants in Nevada. Violation NOAV 2174, exceeding the opacity limit taking into account the number of emission points and the opacity exceedances of 25-30 percent, previous non-compliance issues within the last 60 months results in a 25% increase to the base penalty. Total recommended penalty \$2,250.
- Granite Construction Company, Inc - operates an aggregate processing and hot mix asphalt plant near Lovelock. Violations NOAV 2186 & 2187 exceeding opacity limit of 42 percent and exceeding the permitted daily hours of operation for the hot mix asphalt plant on two occasions. Total recommended penalty \$3,600.
- James Hardie Building Products, Inc. - located in McCarran, manufactures cement based panels and planks. Violations NOAV 2190 & 2191 failing to conduct annual emission compliance tests on two emission systems in 2008 and failing to submit Yearly Reports for 2007 and 2008. Total recommended penalty \$16,140.
- Road & Highway Builders, LLC - operates an aggregate processing facility and hot-mix asphalt plant near Imlay. Violations NOAV 2179-2184 include failure to comply with opacity limits, operate required emissions controls, post copies of its Air Quality Operating Permit on site, comply with permitted throughput limits, and report throughput exceedances in a timely manner. Total recommended penalty \$19,500.
- Sierra Nevada Construction, Inc. - operates an aggregate processing facility and hot-mix asphalt plant near Valmy. Violation NOAV 2185 failure to comply with permitted throughput limits on hot-mix facility plant, operating for six days after having exceeding permitted throughput. Total recommended penalty \$5,040.
- Wulfenstein Construction, Inc. - operates an aggregate processing and hot mix asphalt plant south of Pahrump. Violations 2169 & 2170 failure to install emission controls on seven conveyor transfers and failure to comply with the permitted opacity limit on three conveyor transfers. Initially the penalty assessment was \$10,600. The BAPC considers up to 40% of an initial penalty assessment may be mitigated by up to 65% of the cost of a project that benefits air quality. Wulfenstein proposed changes which would represent considerable improvement over the "best management practices" currently relied upon by Wulfenstein to maintain compliance with opacity limits. Wulfenstein's commitment to the change resulted in mitigation of \$4,240 leaving a total recommended penalty of \$6,360.

At the conclusion of Mr. Kennedy's presentation, Chairman Dodgion opened the meeting to questions from the Commission.

Mr. Gans asked if any of the other companies had been given the same opportunity as had Wulfenstein. Mr. Kennedy said that in the other company situations, mitigation would not have been appropriate.

Mr. Kennedy answered several other questions from the Commissioners. A short discussion ensued as to whether fines successfully discourage violations or whether the fines are too low. Mr. Kennedy responded that this question had been discussed in the past and he is certainly open to any recommendations the Commission may have. Mr. Dodgion said that in the last two or three years the number of violations brought to the Commission have diminished dramatically.

Ms. Landreth said that before the vote, she would like to disclose that she is with the Nature Conservancy and Granite Construction has contributed to the Nature Conservancy within the last five years.

Chairman Dodgion asked if there were any representatives from the companies who wished to address the Commission. John DeMartin representing Granite Construction commented on the effectiveness of fines. Tim Trout representing Jim Hardie Building Products was also in attendance but had no comments.

There being no comments from the public and no further comments from the Commission, Chairman Dodgion asked for a motion.

Motion: Mr. Gans moved for approval of all six Administrative Settlements and Orders which Mr. Shull seconded. Motion passed unanimously.

3) Regulation R004-09: Nevada's Electrical Generation Unit Greenhouse Gas Emissions Mandatory Reporting Requirements - Action Item

The proposed regulation was presented to the Commission by Mr. Mike Elges, Chief of the Bureau of Air Pollution Control. Mr. Elges presented some background information on this regulation for reporting of greenhouse gas emissions from Nevada's electrical generation units which was adopted as a temporary regulation by the Commission in November 2008. He said it is now proposed that the Commission adopt the same provisions as a permanent rule. Mr. Elges went on to say the regulations have been in place for a little more than one year and one reporting cycle has been completed. The reporting cycle went remarkably smooth for the first year with all 21 facilities reporting fully and on time. Mr. Elges said that to make that happen, Nevada worked closely with The Climate Registry - a nationally recognized organization. A reporting system was developed unique to Nevada's needs. He also said now that emission data have been submitted, work is being done to verify the data.

Mr. Elges mentioned that US EPA has finalized a national mandatory greenhouse gas reporting rule that is expected to become effective December 29, 2009. This rule is much broader than Nevada's reporting rule and generally requires that all types of industry report directly to EPA all greenhouse gases -- if emissions are more than 25,000 metric tons per year. This differs from Nevada's rule, in that US EPA addresses industries beyond the electrical generation sector and sets the 25,000 metric ton level, rather than the 5 megawatt level in Nevada's rule. There is no state role in the federal rule. Mr. Elges concluded saying that since it will take some time to evaluate any effect the federal program has on Nevada's program, it makes the more sense now

to continue to implement the state's program. If changes in the future are required they would likely involve a statutory change and then any proposed regulatory changes would be presented to the Commission. The proposal at this time is to adopt as a permanent regulation R004-09.

Chairman Dodgion asked the Commission for questions or comments. There was lengthy discussion regarding industry input, number of facilities and compliance percentage (which is 100%), and reporting quantity levels.

Ms. Landreth requested that the information obtained from this reporting, i.e., what is learned and how Nevada compares to other states, be reported back to the Commission. Mr. Elges responded that he will do that.

There were no public comments on this regulation.

Motion: Ms. Landreth moved for adoption of regulation R004-09 as a permanent regulation. Ms. Barron seconded; motion passed.

4) Regulation R130-09: Changes to Motor Vehicle Emission Program - Action Item

Mr. Elges introduced Mr. Lloyd Nelson from the Nevada Division of Motor Vehicles (DMV) Compliance Enforcement Division; Mr. Nelson and Mr. Elges presented the proposed regulation to the Commission. Mr. Elges explained that 2007 amendments to SB452 ensure that any regulations from DMV that may affect air quality or air quality programs in Nevada be presented to the SEC.

Mr. Nelson explained that the amendments in this proposed regulation affect vehicles classified as Trimobiles and reconstructed vehicles and also certain diesel powered vehicles. The amendments are intended to bring the regulations into agreement with recent changes to Chapter 445B of the Nevada Revised Statutes (NRS). He described the type of vehicles affected by proposed changes and detailed the proposed exemption, standards, or testing criteria. For Mr. Nelson's full written statement, see **ATTACHMENT 3**.

A discussion followed with Commissioners questioning and clarifying size and types of vehicles as well as how an inspector would know the age of an engine. Chairman Dodgion asked if there had been public hearings on this proposed regulation and Mr. Nelson said there had been in Reno and Las Vegas. Mr. Gans asked the purpose or objective of the change and Mr. Nelson said for the most part there was a "parody issue" between gas or diesel powered engines. There were no public comments so the Chairman called for a motion.

Motion: Ms. Barron moved the Commission approve the changes to the motor vehicle program, regulation R130-09 as presented and Mr. Shull seconded; motion passed.

5) Regulation R147-09: Class I Air Quality Operating Permit to Construct (OPTC) - Action Item

Mr. Matthew DeBurle, Permitting Supervisor, Bureau of Air Pollution Control presented this regulation which proposes to amend timelines for case-by-case Maximum Achievable

Control Technology (MACT) program in the Class I OPTC program. Mr. DeBurle provided background on the need for these regulation changes. He said having more experience in making determinations, the bureau is proposing subtle change in the timelines for the process. The change ensures adequate time to process case-by-case application and reach a sound technical basis to support the determination. The bureau sought input on these changes from the regulated community as well as held a public workshop. Specific changes were itemized by Mr. DeBurle. For Mr. DeBurle's full statement, see [ATTACHMENT 4](#).

Mr. Gans asked what industries would be affected. Mr. DeBurle replied major emitters of hazardous air pollutants: large power plants, large cement kilns. There were no comments from the public.

Motion: Mr. Gans moved for approval of R147-09, Ms. Landreth seconded. Motion passed.

6) Regulation R148-09: Revision to Air Emissions Limits at NV Energy's Reid-Gardner Generating Station - Action Item

Mr. Greg Remer, Chief of the Bureau of Air Quality Planning presented this resolution which consists of a single amendment to the Commission's previously adopted BART rule. This amendment if approved would be a permanent rule. For Mr. Remer's full statement, see [ATTACHMENT 5](#).

Mr. Remer noted that based on recent emission information from Reid-Gardner, lower sulfur dioxide emission levels than previously anticipated are being achieved. Therefore the proposal is to reduce emissions from the Reid-Gardner station, units 1-3, from 0.25 lb/MMBtu to 0.15 lb/MMBtu.

Ms. Landreth disclosed that her employer, The Nature Conservancy, has received financial contributions from NV Energy.

Mr. Coyner asked why the emission limits for Mojave are so much lower than they are for Reid-Gardner. Mr. Remer explained that the Reid-Gardner station, units 1-3 are coal-fired. The Mojave station was formerly coal-fired, converted to gas and the emission profiles are different.

There were no public comments.

Motion: Ms. Barron moved to accept the revisions to regulation R148-09 with Mr. Anderson seconding. The motion was approved.

7) Administrator's Briefing to the Commission - Non Action

Mr. Leo Drozdoff provided a briefing to the Commission as follows:

1. Jerritt Canyon: Queenstake agreement - Mr. Drozdoff provided a brief history on the Jerritt Canyon operation. In December 2006, NDEP cited Queenstake for failure to properly maintain processing equipment and air pollution control devices. This triggered a year long investigation during which time (February 2007) NDEP ordered Queenstake to evaluate their air pollution control system for their roasters. A stop order was issued in March of 2008 for failing to comply with the requirements to fully evaluate the mercury emissions control systems for the roasters. In April 2008, Queenstake was allowed to restart operations but required to install and operate certain continuous emissions monitoring and mercury control systems. Queenstake independently shut down all operations at the mine in August 2008 as it failed to meet NDEP's established conditions.

In March 2009, Queenstake was allowed to restart operations because the company had since met several of the previously established conditions. Queenstake was required to install and operate a new mercury control system by May 30, 2009, which the company failed to do. NDEP ordered Queenstake to cease operations on June 5, 2009. While operations were ceased, many significant overhauls and upgrades were made by Queenstake.

NDEP and Yukon-Nevada Gold signed a consent decree and the Elko District Court issued the decree October 13, 2009. The decree binds Queenstake to legally-enforceable obligations and includes deadlines for Queenstake to make environmental changes and sets stipulated penalties. Jerritt Canyon Mine resumed production following the court issuance of the decree. The decree will be in place for two years.

Mr. Drozdoff noted that NDEP is monitoring mine operations during start-up. This is expected to be a lengthy process to oversee compliance as the company makes a number of environmental changes. The decree requires extensive operational monitoring of controls and monthly mercury emissions testing, as well as some other conditions. Queenstake has agreed to pay \$550,000 in settlement and has paid the first installment of \$150,000. The settlement money will go back into the NDEP budgets of air, mining and waste management.

This is the first time NDEP has taken a court action to address compliance issues related to Nevada's Mercury Air Emissions Control Program.

Mr. Drozdoff answered several questions from the Commission; he said there is a new management team and CEO at Queenstake and they now have the resources to make the changes. He said he is cautiously optimistic and feels there are plenty of safeguards for NDEP should things not go well at the mine.

2. Status on American Recovery and Reinvestment Act Funds - Mr. Drozdoff pointed out that not only has the workload of staff increased with this act, it has gone up considerably. This workload increase is due to dealing with underfunded, smaller communities that do not have the experience and sophistication in meeting the requirements of this program and also due to the reporting requirements required under the American Recovery & Reinvestment Act (ARRA) which frequently change. Requirements and recordkeeping is involved and there are less people and less time with

which to do it all; he noted that all of it is being done with existing staff and it is to their credit that everything is going well.

NDEP was awarded funds for five grant programs through ARRA: Drinking Water State Revolving Fund, Clean Water State Revolving Fund, Water Quality Planning 604(b), Clean Diesel Program, and the Leaking Underground Storage Tank Program. Mr. Drozdoff provided specifics on the funding amounts and NDEP programs in receipt of the funds [specifics may be found on the NDEP web site: <http://ndep.nv.gov/recovery/index.html>]

3. Fugitive Mercury Emissions Study - NDEP and the Nevada Mining Association funded a study conducted by Dr. Mae Gustin at the University of Nevada, Reno which focused on measuring mercury emissions from a variety of surfaces disturbed by mining activities at two mines in Nevada. Information gathered was used to develop an estimate of emissions for the surface areas disturbed by mining. Fugitive emissions were estimated and compared to mercury releases from sites undisturbed by mining.

The study shows that mercury emissions from mining disturbances were approximately 20 percent of the total mercury emitted at the two mines. The study also showed heap leaching and tailing impoundments produced the greatest emissions and that current reclamation practices can reduce the current emissions to near natural levels. Importantly, the work showed that the amount of mercury emitted from these types of disturbances can vary significantly among mines, depending on various factors.

Because there are a variety of factors that can affect the emission of fugitive mercury from different mining surfaces, the data developed for these two mines cannot be extrapolated to come up with emissions estimates for other mines. Also, since a mine is a dynamic entity with surfaces changing over time, the emission estimates developed in the UNR study at surfaces of two mines in 2008 may vary significantly in future years.

The study will undergo a peer review and be published sometime in early 2010. A Power Point presentation can be found on the NDEP web site: http://ndep.nv.gov/docs_08/mine_emissions_mercury09.pdf

Chairman Dodgion opened the meeting up to questions on any topic from the Commissioners of Mr. Drozdoff.

Mr. Gans asked if there was anything new on global warming. Mr. Drozdoff answered that at a federal level there is a tremendous amount that has changed. EPA released their endangerment finding which can set a lot in motion. EPA has said they would like to see Congressional action, some type of cap-and-trade bill. This gives EPA the ability to move in a regulatory direction.

At the state level, NDEP is waiting to see what happens on a federal level before moving forward with a state program which may get usurped. Mr. Drozdoff said "we are still doing the work committed to on the reporting side and are actively engaged with EPA to

get some harmony in data reporting.” He noted that there are 12 or so states working with EPA to share data on a data exchange network.

Mr. Coyner asked Mr. Drozdoff to mention the EPA bonding issue. Mr. Drozdoff reported that EPA has determined they have the ability to bond for mining surface disturbances which remains to be seen in this state. In Nevada there is not only a state program but also a federal program with BLM and the Forest Service with regard to bonding in the form of reclamation sureties. So hopefully whatever EPA does nationwide won't negatively impact our programs or industry.

8) Public Comments - Non Action

There were no members of the public at this point and no public comment.

Chairman referred to the listing of future tentative SEC meeting dates and announced that with respect to February 11, 2010 there is not currently anything for that agenda so there will be no February meeting. The next regular meeting is scheduled for June 17, 2010.

The next Commission business is the Ponderosa Appeal scheduled for January 19 & 20, 2010.

Meeting was adjourned at 12:15 pm.

ATTACHMENTS

- ATTACHMENT 1: Settlement Agreements Table - 3 pages
- ATTACHMENT 2: Kennedy Statement on Settlement Agreements - 7 pages
- ATTACHMENT 3: Nelson Statement on Regulation R130-09 - 3 pages
- ATTACHMENT 4: DeBurle Statement on Regulation R147-09 - 1 page
- ATTACHMENT 5: Remer Statement on Regulation R148-09 - 2 pages

ATTACHMENT 1

Settlement Agreements Table - 3 pages

NDEP-BAPC SETTLEMENT AGREEMENTS – December 9, 2009

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER	PROPOSED SETTLEMENT AMOUNT
1	Frehner Construction Company, Humboldt County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the opacity limits for the asphalt plant’s drum dryer and the transfer point between its load-out conveyor and load-out silo.</p> <p>Taking into account opacity exceedances in the range 25-30 percent on two emission units, the Penalty Matrix calls for an initial base penalty is \$1,800. However, Frehner had previous violations within the last 60 months. Application of the Penalty Matrix to account for previous non-compliance results in a 25% increase to the base penalty, or \$450. Hence, the total penalty assessed is \$2,250.</p>	2174	\$2,250
2	Granite Construction Company, Pershing County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the opacity limit for emissions from a baghouse stack and for exceeding the permitted daily hours of operation for the hot mix asphalt plant on two occasions.</p> <p>Based on the Penalty Matrix, the opacity exceedance of 42 percent documented by NOAV 2186 calls for a penalty of \$2,400. The Administrative Penalty Table calls for a penalty of \$600 per violation for exceedances of permitted operational parameters; hence, the operational exceedances documented by NOAV 2187 call for a penalty of \$1,200. The penalty recommended for NOAVs 2186 and 2187 is \$3,600.</p>	2186-87	\$3,600

NDEP-BAPC SETTLEMENT AGREEMENTS – December 9, 2009
(continued)

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER	PROPOSED SETTLEMENT AMOUNT
3	James Hardie Building Products, Inc. Storey County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failing to conduct annual emission compliance tests (source tests) on two emission systems in 2008 and for failing to submit Yearly Reports for 2007 and 2008. Each of the source tests were conducted ten months late.</p> <p>For Class II sources, the Penalty Table calls for a penalty of \$600 per month for failing to conduct required source tests; the violations described in NOAV 2190 call for a penalty of \$12,000. Because James Hardie had more than three other reporting violations within the last 60 months, the two reporting violations described by NOAV 2191 are major violations; the Penalty Table calls for a penalty of \$1,200 for these violations.</p> <p>Each of these penalties must be augmented, however, to account for James Hardie’s history of non-compliance (previous violations within the last 60 months). Applying the Penalty Matrix, the penalty for NOAV 2190 is increased 20% (\$2,400) to a total of \$14,400, and the penalty for NOAV 2191 is increased by 45% (\$540) to a total of \$1,740. The total penalty for both NOAVs is \$16,140.</p>	2190-91	\$16,140
4	Road & Highway Builders, LLC Pershing County	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failures to comply with emission limitations (opacity limits), operate required emission controls (wet dust suppression), post copies of its Air Quality Operating Permit on site, comply with permitted throughput limits, and report throughput exceedances in a timely manner.</p> <p>Based on the Penalty Matrix, the opacity exceedances described in NOAVs 2179 and 2182 call for penalties of \$4,800 and \$900. The Penalty Table assesses a base penalty of \$600 for each of the violations described by the other NOAVs, for a subtotal of \$13,800. The NDEP recommends a cash penalty of \$19,500 in settlement of the violations described in the six NOAVs.</p>	2179 – 2184	\$19,500

NDEP-BAPC SETTLEMENT AGREEMENTS – December 9, 2009
(continued)

5	<p>Sierra Nevada Construction, Inc.</p> <p>Humboldt County</p>	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failure to comply with permitted throughput limits on its hot-mix asphalt plant. In August 2009 Sierra Nevada sent a request to the NDEP-BAPC for an extension of a temporary operating permit, but the plant had already exceeded its total permitted throughput. The plant operated for six days after having exceeded its permitted throughput.</p> <p>The Administrative Penalty Table calls for a penalty of \$600 per violation for failing to comply with a permitted operating parameter. The base penalty of \$3,600 must be increased, however, to account for Sierra Nevada’s non-compliance history. In September 2008, the NDEP issued NOAVs to Sierra Nevada for violations related to opacity exceedances and failing to install and operate required emission controls. Application of the Penalty Matrix results in a 40% increase (\$1,440) to the base penalty of \$3,600, resulting in a total penalty assessment of \$5,040.</p>	2185	\$5,040
6	<p>Wulfenstein Construction, Inc.</p> <p>Nye County</p>	<p>NAC445B.275 “Violations: Acts Constituting; notice.” For failure to install emission controls (wet dust suppression) on seven conveyor transfers and failure to comply with the permitted opacity limit on three conveyor transfers.</p> <p>For Class II facilities, the Administrative Penalty Table calls for a base penalty of \$1,000 per violation for failing to install and operate required emission controls. The Penalty Matrix calls for a penalty of \$1,200 per violation for opacity exceedances in the range of 30 to 40 percent. Therefore, the initial penalty assessment for NOAVs 2169 and 2170 totals \$10,600. These violations represent Wulfenstein’s only violations within the last 60 months.</p> <p>Up to 40% of an initial penalty assessment may be mitigated by considering up to 65% of the cost of projects that benefit air quality. Based on Wulfenstein’s commitment to install Durex covers and a wind shield on the screening unit, at a total cost of ~\$7,200, up to \$4,240 of the initial penalty of \$10,600 may be mitigated. The NDEP recommends a cash penalty of \$6,360 in settlement of these violations.</p>	2169, 2170	\$6,360

ATTACHMENT 2

Kennedy Statement on Settlement Agreements - 7 pages

SEC Mtg. December 9, 2009 – C&E statement

Mr. Chairman, members of the Commission, good morning. For the record, my name is Larry Kennedy. I Supervise 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. Based on a long-standing agreement, the Bureau's Compliance & Enforcement Branch assesses penalties for these violations on the behalf of the Commission. The companies listed on today's agenda are aware that the Branch acts as the Commission's agent in negotiating Settlements, and that the Commission may see fit to adjust a penalty that we have assessed.

There are six Settlement agreements involving 14 Notices of Violation on today's agenda. Each company has signed off on the proposed penalty.

Before discussing each Settlement I'd like to make some general remarks.

- Road construction companies account for five (5) Settlement Agreements.
- Exceeding the opacity limit for the visibility of emissions from a vent or stack was the most common violation,
- But three (3) other violations were issued to these companies for exceeding the limits established for production throughputs or daily hours of operation. These limits serve as the basis for some pollutant

emission factors, and are established to help ensure that sources operate in compliance with permitted emission limits.

- Several of the companies were working on projects funded by the Economic Recovery Act, or ERA.
- The construction companies expressed similar excuses (reasons) for having committed the violations, centering on layoffs made in response to the 2008 economic downturn. As projects came on line in 2009, companies lacked either qualified staff or sufficient staff to operate the plants properly, and ran into problems when they tried to ramp up production.

Mr. Chairman, what I propose to do is describe both of the proposed Settlements before asking if there are any questions. Would that be acceptable?

The first Settlement involves Frehner Construction Company. Frehner operates aggregate processing and hot mix asphalt plants in Nevada. In July 2009, Frehner exceeded the opacity limits for emissions from its temporary asphalt plant's drum dryer and the transfer point between its conveyor and load-out silo.

The Compliance & Enforcement Branch uses the Penalty Matrix to help assess penalties for emission violations. The Matrix calls for a penalty of \$900 per unit for opacity exceedances in the range 25-30 percent, resulting in an initial penalty assessment of \$1,800 for two emission units. However, Frehner had previous violations within the last 60

months. Application of the Penalty Matrix to account for previous non-compliance results in a 25% increase to the base penalty, or \$450.

The recommended penalty is \$2,250.

Settlement No. 2 involves Granite Construction Company. Granite operates an aggregate processing and hot mix asphalt plant near Lovelock in Pershing County. In July 2009, Granite exceeded the opacity limit for emissions from its asphalt plant's baghouse stack and exceeded the permitted daily hours of operation for the plant on two occasions.

The Compliance & Enforcement Branch uses the Administrative Penalty Table to assess penalties for non-emission violations. The Table calls for a penalty of \$600 per violation for exceedances of permitted operating parameters, resulting in a base penalty \$1,200 for the operational exceedances. The Penalty Matrix calls for a penalty of \$2,400 for the single opacity exceedance of 42 percent.

The recommended penalty totals \$3,600.

Settlement No. 3: James Hardie Building Products. James Hardie manufactures cement-based building materials at its facility in the TRI industrial park in Storey County. James Hardie failed to submit Yearly Reports for 2007 and 2008, and failed to conduct annual emission

compliance tests (source tests) on two emission systems in 2008. Each of the source tests were conducted ten months late.

For Class II sources, the Penalty Table calls for a penalty of \$600 per month for failing to conduct required source tests; the violations described in NOAV 2190 call for a base penalty of \$12,000. Because James Hardie had more than three other reporting violations within the last 60 months, the two reporting violations constitute major violations; the Penalty Table calls for a base penalty of \$1,200 for these violations.

Each of these penalties must be adjusted, however, to account for James Hardie's history of non-compliance, including Notices of Violation issued for reporting, monitoring, and recordkeeping violations in early 2006. Applying the Penalty Matrix, the \$1,200 penalty for reporting violations increase 45% - or \$540 - to a total of \$1,740. The base penalty for failing to conduct source tests increases 20% - or \$2,400 - to a total of \$14,400.

The recommended penalty totals \$16,140.

Settlement No. 4: Road & Highway Builders operates aggregate processing and hot mix asphalt plants in Nevada. In August 2009, the Bureau of Air Pollution Control discovered that Road & Highway had committed numerous violations at its temporary Imlay plant in Pershing County. The violations ranged from failures to:

- comply with opacity limits for the visibility of emissions;
- operate required emission controls (wet dust suppression);
- post a copy of its Air Quality Operating Permit on site;

- comply with permitted throughput limits, and to report those throughput exceedances in a timely manner.

The Penalty Matrix calls for penalties of \$900 and \$2,400 per violation for the opacity exceedances described in the Notices of Violation, for a base penalty of \$5,700. The Penalty Table assesses a base penalty of \$600 for each of the major violations described by the other Notices of Violation, for a subtotal of \$13,800.

The total recommended penalty for this Settlement is \$19,500.

Settlement No. 5: Sierra Nevada Construction operates aggregate processing and hot mix asphalt plants in support of road construction projects in Nevada. In August 2009 Sierra Nevada sent a request to the NDEP-BAPC for an extension of its permit for a temporary location near Valmy, but the plant had already exceeded its total permitted throughput. The plant operated for six days after having exceeded its throughput limit.

The Penalty Table calls for a penalty of \$600 per violation for failing to comply with a permitted operating parameter. The base penalty of \$3,600 must be increased, however, to account for Sierra Nevada's non-compliance history. In September 2008, the NDEP Bureau of Air Pollution Control issued Notices of Violation to Sierra Nevada for opacity exceedances and failing to install and operate required emission controls. Application of the Penalty Matrix results in a 40% increase

(\$1,440) to the base penalty of \$3,600, resulting in a total penalty assessment of \$5,040.

The recommended penalty totals \$5,040.

Settlement No. 6: Wulfenstein Construction operates aggregate processing and hot mix asphalt plants near Pahrump in Nye County. In April 2009, the Compliance & Enforcement Branch discovered that Wulfenstein had failed to install the wet dust suppression required by its air quality permit on seven conveyor transfers, and consequently failed to comply with the opacity limit on three of them.

The Penalty Table calls for a base penalty of \$1,000 per violation for failing to install and operate required emission controls, for a penalty of \$7,000. Based on opacity exceedances in the range of 30 to 40 percent, the Penalty Matrix calls for a penalty of \$1,200 per unit, resulting in a penalty of \$3,600. Based on these assessments, the total penalty for the violations described in the two Notices of Violation is \$10,600. These violations represent Wulfenstein Construction's only violations within the last 60 months.

The NDEP Bureau of Air Pollution Control considers that up to 40% of an initial penalty assessment may be mitigated by up to two-thirds (65%) of the cost of a project that benefits air quality. The cost of corrective actions necessary to bring a source back into compliance do not qualify for this consideration. Wulfenstein proposed to install dust covers and a wind shield on an aggregate screen, which would represent a considerable improvement over the "best management practices" that

Wulfenstein currently relies on to maintain compliance with opacity limits. Wulfenstein completed the project at a cost of ~\$7,200.

40% of the initial penalty assessment of \$10,600 totals \$4,240, which is less than two-thirds of the cost of the project. Based on Wulfenstein's installation of the dust covers and wind shield, we recommend that the initial penalty assessment be reduced by \$4,240.

The NDEP recommends a penalty of \$6,360 in Settlement of these violations.

ATTACHMENT 3

Nelson Statement on Regulation R130-09 - 3 pages

Mr. Chairman and members of the State Environmental Commission, my name is Lloyd Nelson and I am a DMV Services Manager with the Nevada Department of Motor Vehicles, Compliance Enforcement Division.

The changes to Chapter 445B of the Nevada Administrative Code proposed in LCB File R130-09 affect vehicles classified as Trimobiles and Reconstructed, and also certain diesel powered vehicles. The proposed amendments are intended to bring the regulations in agreement with recent changes to Chapter 445B of the Nevada Revised Statutes, due to the passage of Assembly Bill 414 during the 2009 Legislative Session.

Trimobiles have three wheels in contact with the ground, two being power driven. The proposed amendments to Chapter 445B of NAC would exempt certain Trimobiles, based upon the curb weight of the vehicle set through Federal Code of Regulations for motorcycles. The Department has found that Trimobiles with motorcycle engines are not suitable for emission testing using current test equipment and prescribed testing procedures because of the engine size and design. Trimobiles with a heavier curb weight rating typically have an automotive type engine and will require the annual emissions test using emission standards based upon the year of the engine. Trimobiles are very low in numbers, with less than a couple hundred registered throughout the state. This proposed change if adopted will provide our field staff with much appreciated criteria to exempt the Trimobiles equipped with motorcycle engines. The proposed changes to NAC affecting trimobiles can be found in Section 8 & 9 of LCB File R130-09.

Reconstructed vehicles, as noted in NRS 445B.100 means any vehicle which shall have been assembled or constructed largely by means of essential parts, new or used derived from different vehicles or makes of vehicles. Reconstructed vehicles are also quite low in numbers throughout the state, around a couple hundred currently registered. However, since these vehicles are built from parts of different vehicles there were no reasonable emission standards to gauge emission compliance for these vehicles. The proposed changes to NAC shall require reconstructed vehicles be emission tested using emission standards based upon the year of the engine. This proposed change, if adopted will provide our field staff with much appreciated criteria to test reconstructed vehicles for

emission compliance. The proposed changes to NAC affecting reconstructed vehicles can be found in Section 9 of LCB File R130-09.

Until July of this year 1968 and newer diesel powered vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or less were subject to annual emissions testing for vehicle registration. Effective July of this year new legislation increased the scope of diesel powered vehicles emission tested for registration purposes to 14,000 pound manufacturer's gross vehicle weight rating. About 9,500 additional diesel powered vehicles (weight falling between 10,001-14,000 lbs) are expected to be subject to annual inspection tied to registration each year. The proposed changes to NAC affecting diesel vehicles subject to the registration enforced emission testing can be found in Sections 1-8 of LCB File R130-09.

One final proposed regulation change, Section 10 found in LCB File R130-09 addresses the weight of vehicles subject to the random roadside emission inspection. Heavy duty motor vehicles with a manufacturer's gross vehicle weight rating of 14,001 pounds or more shall be subject to the random roadside emission inspection.

This concludes my overview of proposed changes found in LCB File R130-09, and I would be happy to answer any questions.

Thank you for your time.

NRS 482.100 “Reconstructed vehicle” defined. “Reconstructed vehicle” means any vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models or types, or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

[Part 1:202:1931; A 1951, 165; 1953, 280]

Reconstructed vehicles registered as of April 2009 = 107

NRS 482.129 “Trimobile” defined. “Trimobile” means every motor vehicle designed to travel with three wheels in contact with the ground, two of which are power driven.

(Added to NRS by 1979, 854)

Trimobiles registered as motorcycle classification as of June 2008 = 60

Trimobiles registered under a vehicle classification as of June 2008 = 62

Curb weight to classify a Trimobile as a motorcycle:

- a) 1978 – 1997 = less than 1,500 pounds
 - b) 1998 or newer = less than 1,750 pounds
-

A physical inspection of each Trimobile and Reconstructed vehicle will need to be done at the DMV Emission Test lab, in order to test any of the above vehicles for emission compliance using year of the engine.

DMV staff will inspect the vehicle and enter specific information into an application specially built by Department Information Technology staff to direct the vehicle to the proper prescribed test procedure. The application is called the Exceptions Vehicle Table, and has operated successfully for the last two years.

ATTACHMENT 4

DeBurle Statement on Regulation R147-09 - 1 page

Good Morning, Mr. Chairman and members of the commission. For the record, my name is Matthew DeBurle. I'm the permitting supervisor in the bureau of air pollution control. I'm here today to present Regulation R147-09. This regulation proposes to amend timelines for case-by-case Maximum Achievable Control Technology (MACT) program in the Class I Operating Permit to Construct (OPTC) program.

Let me give you a little background on the need for these regulation changes: The bureau currently has the authority to conduct case-by-case MACT evaluations. When the OPTC program was originally developed, the bureau had little experience in conducting case-by-case evaluations. Now that the bureau has more experience in making case-by-case determinations, we are proposing a subtle change in the timelines for that process. This change ensures that there is adequate time to process a case-by-case application and come to a good sound technical basis to support the determination.

The bureau sought input from and proposed this change to the regulated community. Based on their input and support, the bureau is proposing that these regulations be adopted as proposed. Specifically, a 30-day administrative review for completeness, six months to make a determination and establish a public comment period. The final action must be completed within one year of the official date of submittal of the case-by-case MACT determination application. This timeframe is also consistent with the current Class I OP (Title V) timelines for a case-by-case determination. As with all proposed regulations, the bureau held a public workshop, where no negative comments were received.

Now I will briefly run through the proposed changes to the OPTC regulations which are in your packet.

Section 1 on page two of your packet has the application contents. The application needs to have the same information required by 40 CFR Part 63 for a case-by-case MACT determination.

Section 2 on page 3 establishes the timelines by which the bureau processes the application up to the point of the public notice. Page 5 of your packet contains the deadline by which the final action must be taken on the application.

Section 3 on page 8 updates the NAC to include the information required by 40 CFR Part 63.

Thank you for consideration of these proposed changes. I will be happy to answer any questions the Commission has on these amendments.

ATTACHMENT 5

Remer Statement on Regulation R148-09 - 2 pages

State Environmental Commission
December 9, 2009
LCB File Number R148-09

Mr. Chairman, members of the Commission, for the record, my name is Greg Remer and I'm the Chief of the Bureau of Air Quality Planning. I'm here to present LCB File Number R148-09, which consists of a single amendment to the Commission's previously adopted Best Available Retrofit Technology (or BART) rule. This amendment, if approved, will be permanent.

As the members may recall, in November of last year the Commission adopted regulations addressing federal Regional Haze BART requirements. Section 1 of File Number R148-09 modifies Section 4 of the Commission's previously adopted BART regulation. LCB has yet to codify these provisions into the Nevada Administrative Code. As can be seen, the only changes to this section are found on page 4 of the proposed regulation. We are reducing the sulfur dioxide emission limits for Units 1 through 3 at Nv Energy's Reid-Gardner station from 0.25 lb/MMBtu to 0.15 lb/MMBtu. This change has resulted from re-examining recent emission information that considers operational performance, based on the installation of baghouses upstream of the existing sulfur controls for each unit. The installation of the baghouses were the result of a 2007 consent decree between NDEP, EPA and Nv Energy to resolve non-compliance issues at Reid-Gardner

station. At the time the Commission adopted this section last year, no operational data was available to gauge the effect the baghouses would have. However, based on the recent emission information, lower emission levels than previously anticipated are able to be achieved.

As always, the Division conducted a work shop for the amendments. The workshop for this proposal was conducted in Carson City on November 4th, 2009 NV Energy expressed agreement for the change and no adverse comments were received. As a result, the Division recommends that Petition R148-09 be adopted as proposed.

I'd be happy to answer any questions you may have.