

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

Meeting of February 15, 2012, 9:00 AM

Nevada Department of Wildlife
1100 Valley Rd., Reno NV

Members Present:

E. Jim Gans, Chairman
Alan Coyner
Kathryn Landreth
Jim Barbee
Mark Turner
Tom Porta
Cary Richardson
Pete Anderson
Jason King
Ken Mayer

Members Absent:

Frances Barron

SEC Staff Present:

Rose Marie Reynolds, SEC/DAG
John Walker, Executive Secretary

BEGIN SUMMARY MINUTES

The meeting was called to order at 9:05 am by Chairman Gans who stated the hearing was properly noticed and there was a quorum; Chairman Gans then moved to the first agenda item.

1) Public Comments (Action Item): Chairman Gans called for public comment; hearing none he moved to agenda item number 2.

2) Approval of Agenda (Action Item): Chairman Gans requested comments on the agenda; hearing none he asked for a motion to adopt the agenda; Commissioner Coyner moved to approve and Commissioner Porta seconded. The agenda was approved as written.

3) Approval of the minutes for the October 5 and November 7, 2011 SEC meetings (Action Item): Chairman Gans requested comments from the Commission on the October and November meeting minutes; hearing none, he called for a motion to adopt the minutes. Commissioner Turner moved to approve the minutes for both meetings -- Commissioner Barbee seconded; motion passed unanimously.

4) Penalty Assessments for Air Quality Violations (Action Items): Mr. Francisco Vega, Bureau of Air Pollution Control, presented the specific violations and recommended penalties for the following two companies listed below (Of note, **Attachment 1 is the penalty assessment table for each of the following penalty assessments**).

- A. **Refuse, Inc.** -- Penalty Assessments for Air Quality Violation No. 2330; failure to comply with asphalt plant through-put rate limit as required by Class I Air Quality Operating Permit AP4953-1148.01. Recommended penalty \$28,000.

After hearing the details about this violation from Mr. Vega, a number of technical questions were asked by Commissioner Porta and Commissioner Coyner; Mr. Vega responded to each of the questions. Chairman Gans then called for public comments. Ms. Cherry Hummel, Environmental Manager for Waste Management (Refuse), addressed the Commission, stating there were some misunderstandings between Refuse and NDEP about certain technical aspects of the permit violation that lead to the penalty assessment (i.e., asphalt grinder through-puts run-times). Ms. Hummel acknowledged to the Commission that Refuse was in fact in violation of the permit. Commissioner Porta asked if a revised permit is being considered to address asphalt grinder through-put volumes. Mr. Larry Kennedy (NDEP) addressed the Commission and confirmed that NDEP was proceeding through a revised permitting process with Refuse, Inc.

Motion: Hearing no further comments, Chairman Gans called for a motion. A motion was made by Commissioner Porta to accept the Division's recommended penalty of \$28,000.00 for NOAV 2330; the motion was seconded by Commissioner King and the motion passed unanimously.

- B. **California Rock Crusher Corp.** – Penalty Assessments for failure to comply with permitted monitoring recordkeeping and throughput requirements set forth in Class II Air Quality Operating Permit AP1422-2740 COLA 2245. Recommended penalty \$5,400.

Mr. Vega explained the penalty assessment for California Rock Crusher Corp. to the Commission. Commissioner Coyner asked where the facility was located; Mr. Kennedy noted it was in Storey County in the industrial park on the south side of the Truckee River. Chairman Gans called for further questions from the Commission and hearing none he ask for public comments. The General Manager from California Rock addressed the Commission and he stated his company did not fully understand Nevada air quality rules and was thankful to NDEP for guiding them through the regulatory process. He said his company did not contest the penalty assessment.

Motion: Chairman Gans then called for additional public comments; hearing none he asked for a motion whereupon Commissioner Landreth moved for approval of staff recommendation NOAV Nos. 2380 and 2381 in the amount of \$5,400.00; her motion was seconded by Commissioner Turner and the motion passed unanimously.

5.) Unopposed Petition for a Declaratory Order: (Action Item): Chairman Gans introduced this agenda item and asked who would be presenting the Petition. Mr. Dan Galpern addressed the Commission, stating that he is an attorney with the Western Environmental Law Center and represented the Sierra Club and Moapa Band of Paiutes concerning this agenda item. He noted a community center for the Moapa Band of Paiutes is about one mile from NV Energy's Reid Gardner Coal fired power plant in Southern Nevada. He said the petition requests the SEC to rule on whether it has jurisdiction to hear the Sierra Club and Moapa Band of Paiutes' appeal concerning a Permit (LF006-CMF-01) issued by the Southern Nevada Health District (SNHD) to NV Energy for an expansion of the coal ash landfill at the Reid Gardner Power Station.

Mr. Galpern provided the Commission with an overview of the industrial waste landfill at the power plant, stating his clients wish to contest the expansion of the landfill as provided for under the permit issued to NV Energy by the SNHD.

Mr. Galpern advised that under NAC 444.748(2), he has come before the Commission to appeal the permit decision of the solid waste management authority in accordance with the State Environmental Commission's procedural rules. In his presentation, Mr. Galpern noted it was not his clients' desire to necessarily have an appeal hearing before the Commission, but his clients would like to have a hearing "somewhere".

Mr. Galpern said he had appealed the landfill permit decision directly to the SNHD, but was told there was no appeal process available before that body. He stated that his clients are required to exhaust all administrative remedies before their case could be heard in a court of law. Mr. Galpern did acknowledge, however, that appeals concerning solid waste permits addressed by the Commission were confined to decisions made by the Nevada Division of Environmental Protection (NDEP), as opposed to the other two solid waste management authorities in Nevada.

After hearing from Mr. Galpern, Chairman Gans asked if NDEP had a position on the appeal jurisdiction issue. Mr. Dave Emme, Deputy Administrator for NDEP, responded and gave the Commission the historical context of the solid waste statutes and regulations, and how they've been applied concerning appeals of solid waste management issues.

Mr. Emme said the SEC had never heard an appeal involving a solid waste permit that was not issued by NDEP. He also acknowledged that past decisions by the SEC concerning the disposition of appeals were strictly limited to final decisions of the Department of Conservation and Natural Resources, as opposed to the other waste management authorities as defined in NRS chapter 444, i.e., Washoe County Health District and SNHD. He further stated that the two local waste management authorities in Nevada may have adopted NDEP's regulations by local ordinance, but the ordinances themselves govern local permitting of solid waste landfills in Washoe and Clark counties. Accordingly, Mr. Emme stated that appeals of permits issued under the authority of local ordinances would be dealt with by the respective governing boards of the health districts and not the SEC.

Mr. Emme provided the Commission with additional historical context about how the three waste management authorities in Nevada evolved. He noted that NDEP's role is limited to a periodic review of the local health districts' solid waste management programs, and the review is done to ensure they meet federal Environmental Protection Agency standards in the same way that NDEP must meet those standards. He also said NDEP reviews only the local program as opposed to local permits. NDEP has no signoff authority on local permits. With that, Mr. Emme concluded his remarks and Chairman Gans called for questions from the Commission.

Commissioner Anderson asked about the status of the Sierra's Club's appeal submitted to the SNHD. Mr. Galpern responded, noting that an appeal process was not afforded to his clients by SNHD. Chairman Gans asked if there was anyone from the SNHD that could respond. Mr. Terry Coffing, counsel for SNHD, addressed the Commission, stating that Mr. Galpern was correct and there was no appeals process within the SNHD itself. Commissioner Coyner asked why and Mr. Coffing said SNHD had not seen sufficient demand for an appeals process and that severe budget constraints prevented SNHD from implementing such a process. After further discussion Mr. Coffing said the Sierra Club does have a remedy to resolve the Reid Gardner permit dispute through the courts.

Chairman Gans then asked if someone from the Washoe County Health District (WCHD) would care to comment. Mr. Bob Sack, Division Director of Environmental Health Services, addressed the Commission. Mr. Sack stated that he agreed with Mr. Emme's comments regarding the solid waste management statutes. He said that the intent was to have minimal oversight of the local solid waste management authorities by NDEP. Mr. Sack said their regulations could be different than the state's. He said the intent was never to have the SEC hear appeals of local regulations. Mr. Sack testified to the Commission that WCHD had an appeals process in place, whereby WCHD staff issue permits directly, and if an appeal is filed, it is heard by the District Board of Health. He also stated that a final decision by the District Board of Health can be appealed to district court.

Chairman Gans proceeded by asking fellow Commissioners for comments. Commissioner Coyner stated he did not believe the Commission had jurisdiction over permitting actions administered by local waste management authorities. Commissioner Porta discussed the existing regulations. Commissioner Landreth questioned whether jurisdiction can be conferred by regulation, and counsel for the SEC described the difference in the Commission's authority under NRS chapter 444 compared to NRS chapters 445A and 445B. After the conclusion of additional discussions by the Commission and members of the public, including counsel for NV Energy and Mr. Sack from WCHD, Chairman Gans called for a vote on the motion.

Motion: Commissioner Coyner moved to deny the "Unopposed Petition for Declaratory Order" submitted by the Western Environmental Law Center for the reason that the Commission does not have jurisdiction to hear the appeal under NAC 444.748(2). The motion was seconded by Commissioner Barbee and passed with one dissenting vote by Commissioner Porta. (Attachment 2 contains the final decision on this matter issued by the SEC on March 5, 2012)

6) R123-11: A Regulation Relating to Solid Waste: This proposed permanent regulation would amend NAC 444.748. The amended regulation makes clear that only those appeals involving a decision by the Nevada Division of Environmental Protection may be appealed to the State Environmental Commission.

This regulation was presented to the Commission by Mr. Art Gravenstein; following are his verbatim remarks given to the Commission.

Good morning! My name is Art Gravenstein and I am the supervisor of the Solid Waste Branch for the Bureau of Waste Management at NDEP.

As you are aware, the Bureau of Waste Management periodically reviews the state solid waste regulations. Based on a recent review, the Bureau is proposing to update our solid waste regulations by amending one regulation. Thus, Item R123-11 is before you for consideration today.

On February 1, 2012, a workshop to solicit public comment on the proposed revisions was held in Carson City with a video link to Las Vegas. A total of seven people attended the workshop at both locations. The proposed regulation and notes from the workshop were posted on the NDEP website and made available for review and comment via the internet.

Let me briefly describe proposed revisions: R123-11 proposes to amend NAC 444.748 to clarify the jurisdictional responsibilities associated with appeals concerning the management and disposition of solid waste by Nevada's three Solid Waste Management Authorities. The proposed amendment makes it clear that only those appeals involving the management of solid waste under the direct regulatory control of the Nevada Division of Environmental Protection, may be appealed to the State Environmental Commission and must conform to the procedural rules of the SEC as codified under NAC 445B.875.

The current regulations were never intended to include the appeal, to the State Environmental Commission (SEC), of solid waste matters under the jurisdiction of Washoe and Clark County. Such matters have typically been appealed to the District Boards of Health in their respective counties. The amendment is to subpart 2 of NAC 444.748 and consists of deleting the phrase "solid waste management authority" and replacing it with the word "Division". I would be glad to answer any questions about this petition (*end of verbatim remarks*).

Chairman Gans asked the Commission if they had any questions for Mr. Gravenstein whereby Commissioner King ask about any questions raised at the regulatory workshop. Mr. Gravenstein stated that a representative from the Southern Nevada Health District asked "when would the proposed regulation become effective" and Mr. Gravenstein respond that it would become effective when the Legislative Commission and/or subcommittee thereof approved the regulations.

Motion: Hearing no further public comment on the matter, Chairman Gans asked for a motion from the Commission. Commissioner Porta moved for acceptance of the regulation (LCB File # R123-11) noting the regulation provides more clarity as per action taken previously on the Unopposed Petition for a Declaratory Order. Mr. Porta noted that adoption of these regulations is a first step in providing clarity about appeals and the jurisdiction thereof, which hopefully might lead to needed changes in statutory language as well. The motion was seconded by Commissioner Barbee and passed unanimously.

7) R049-11: Recycling Services at Apartment Complexes and Condominiums:

This regulation addresses revisions to standards for municipal recycling at apartment complexes and condominiums as required by SB 417. Under existing law (NRS 444A.010 to 444A.050), Nevada counties are required to provide for recycling services. The level of service required is dependent on the population of the county.

This regulation was presented to the Commission by Ms. Jasmine Vittori; following are her verbatim remarks given to the Commission.

Good morning. My name is Jasmine Vittori; I'm here on behalf of the Bureau of Waste Management of the Nevada Division of Environmental Protection (NDEP). During the 2011 Legislative Session, Senate Bill 417 (SB 417) was introduced addressing recycling services available at apartment complexes and condominiums. SB 417 directs the Division to update our recycling regulations by adding provisions for recycling services at apartment complexes and condominiums.

On November 29, 2011, a workshop was held to solicit public comments on these proposed revisions. The workshop was held in Carson City with video links to both Las Vegas and Elko. A total of nine people attended the workshop at all locations, in addition to the nine people from NDEP. One public comment was made at the workshop regarding source separation and single stream recycling. The SEC also received one comment in favor of SB 417, but with two concerns regarding the possibility of increased costs and fees being passed on to apartment complex members, and the concern over penalties for "commingling" of recyclables by residents. The proposed regulations, public notice, workshop agenda, fact sheet, and minutes from the workshop were posted on the NDEP website and made available for review and comment via the internet.

I will now describe the proposed regulation amendments:

Proposed regulation R049-11 seeks to amend recycling regulations for Nevada Administrative Code 444A.120 and NAC 444A.130, pertaining to recycling regulations.

Presently NAC 444A.120 and NAC 444A.130 do not make provisions for or establish minimum standards for recycling at apartments or condominiums. The proposed regulation amendments are specific to municipalities above 100,000 people where source-separated, or curbside, recycling is available. The proposed regulation amendments would add provisions for recycling at apartment complexes and condominiums.

It is important to note that the proposed regulation amendments do not mandate public participation in recycling at apartment complexes and condominiums; they only require that recycling services be available at those locations. How recycling is made available or implemented is not outlined in the proposed regulation amendments.

With that, I will be glad to answer any questions regarding these proposed regulation amendments (*end of verbatim remarks*).

Chairman Gans proceeded by asking fellow Commissioners for any additional input. Commissioner Anderson asked why the eligible population under this regulation was increased by 5,000. Ms. Vittori stated that all of Nevada's statutes were uniformly increased by this amount during the last legislative session.

Motion: Hearing no further public comments on the matter, Chairman Gans asked for a motion from the Commission. Commissioner Jim Barbee moved for acceptance of the regulation (LCB File #R049-11); the motion was seconded by Commissioner Mayer and passed unanimously.

8) R052-11: A Regulation Relating to Underground Storage Tanks: This proposed regulation establishes an operator training component for the Nevada Division of Environmental Protection's (NDEP's) underground storage tank program. The basis for the regulation falls under the provisions of Section 9010a of the federal Solid Waste Disposal Act (SWDA) as amended by the Energy Policy Act of 2005. The proposed regulation would amend NAC 459.9921.

Mr. Scott Smale, NDEP Bureau of Corrective Actions, presented the regulation to the Commission.

Mr. Smale discussed the public involved process, noting that approximately 100 members of the regulated community, i.e., tank owners, operators and environmental consultants, attended the NDEP workshops. He noted the NDEP prepared a list of [Frequently Asked Questions](#) for the workshops and then he proceeded to discuss the specific operator training requirement in the regulations. He did say the regulation is a requirement of the Federal Energy Policy Act, which contains standards for "Secondary Containment, Delivery Prohibitions and Operator Training" all related to underground storage tanks. Mr. Smale said NDEP has implemented all of the requirements except "Operator Training" and that all of the requirements are intended to prevent release of hazardous substances to the environment. He also said that failure to provide operator training to the regulated community could result in the loss of federal grant funds used to support the program and/or jeopardize the state's authority to administer the program -- meaning the program would then revert to US EPA. He then presented a section by section analysis of the regulation to the Commission.

Chairman Gans proceeded by asking fellow Commissioners if they had questions for Mr. Smale. Commissioner Richardson asked about the driving force behind the regulations; was it operator error or lack of knowledge, or was it a compliance issue with federal regulations. Mr. Smale said it was primarily a response to federal requirements. Commissioner Anderson asked about recordkeeping requirements. Mr. Smale replied that no new forms are required; however, there are general guidelines on what kind of records must be kept. Commissioner Porta asked about training timelines (noting the regulation becomes effective on August 8, 2012). He asked about the current availability of "private sector" operator training programs. Mr. Smale said NDEP is in

the process of [approving trainers](#) that will address geographic coverage as well as online training programs. Next, Commissioner Mayer ask if NDEP was going to approve trainers and Mr. Smale said yes, and then he asked about renewals and/or requirements for continuing education whereby Mr. Smale said as long as a facility stays in compliance with NDEP's regulatory program no additional training certification would be necessary. Commissioner Turner ask Mr. Smale several questions about state compliance with the federal guidance for the training program and Mr. Smale said non-compliance would impact program funds from EPA and ultimately the state's authority to regulate underground storage tanks. Finally, Commissioner Anderson asked about the financial impact the regulation could have on the small business community (e.g., mom and pop gas stations). Mr. Smale said the one-time cost would be about \$150.00 for class A & B training. Lastly, Chairman Gans asked about reciprocity with other states and Mr. Smale said Nevada would accept individual's training by other states determined to be in good standing.

Motion: Hearing no further public comment on the matter, Chairman Gans asked for a motion from the Commission. Commissioner Landreth moved for acceptance of the regulation (LCB File #R052-11); the motion was seconded by Commissioner Turner and passed unanimously.

9) R129-11: A Regulation Relating to Air Pollution Control: The regulation updates NAC 445B.221, "Adoption by reference and applicability of certain provisions of federal law and regulations." The regulation adopts into State regulation certain federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules that have been adopted by the US EPA and published in the Federal Register since July 2010. In addition, this amendment will update the Division of Environmental Protection's adoption of federal Prevention of Significant Deterioration (PSD) rules relating to fine particulate matter.

Mr. Rob Bamford, NDEP Bureau of Air Quality Planning, presented the regulation to the Commission; following are his verbatim remarks given to the Commission.

Mr. Chairman, members of the commission, for the record my name is Rob Bamford, Chief of the Bureau of Air Quality Planning for the Division of Environmental Protection. I'm here today to present a brief overview of the proposed regulation R129-11.

This regulation consists of updates to the air programs' adoption by reference provisions and the repeal of two (2) existing provisions. The proposed regulation was "workshopped" on December 21, 2011 and we did not receive any comments.

The air program has delegated authority and must routinely adopt federal regulations to maintain program authority. The federal provisions proposed for adoption by reference update existing federal provisions already adopted by state regulations under NAC 445B.221; we are not adopting any new provisions. The items proposed for adoption by reference are from 3 different parts of the Title 40 in the CFR's.

1) The first is part 52 which deals with approval and promulgation of implementation plans. The provision we propose to adopt would update the requirements for pm 2-5 under the PSD program and updates a test procedure for monitoring systems.

2) The second part is part 60, which deals with new source performance standards. This provision would update requirements for incinerators, large internal combustion engines and Portland cement plants.

3) The third part is part 63, which deals with National Emission Standards for Hazardous Air pollutants. This provision would update emission standards for the polymer and resin industries, marine tanks vessel loading, pharmaceutical production, printing & publishing and plating & polishing.

The two existing state regulations proposed for repeal are NAC 445B.159, the definition of Ringelmann Chart and NAC 445B.254 Exceptional Events.

Ringelmann Chart is proposed for repeal because it is an outdated system used to describe smoke opacity that NDEP does not use. The exceptional events regulation was originally adopted in 1991 and has since been superseded by the requirement that EPA exclusively determine exceptional events. Therefore the regulation is effectively null, and we propose to repeal it. *(end of verbatim remarks).*

Chairman Gans proceeded by asking fellow Commissioners for any additional input. Commissioner Porta asked how air quality issues associated with “exceptional events” such as unusual wind events, fires, and the like are handled in terms of reporting requirements to US EPA. Mr. Bamford responded by explaining that NDEP can petition EPA to exclude such events from information collected in data bases maintained by EPA. Such exclusions would then not count against local air quality violations. Next Commissioner Richardson asked about air pollution caused by local burning in places like Douglas County. Mr. Bamford stated that if the air monitors were not “pinged” then no action would be taken, otherwise such burning is done with approved variances for such an activity.

Motion: Hearing no further public comment on the matter, Chairman Gans asked for a motion from the Commission. Commissioner Porta moved for acceptance of the regulation (LCB File #R129-11); the motion was seconded by Commissioner Coyner and passed unanimously.

10) R135-11: Rules of Practice, State Environmental Commission (SEC): As allowed under NRS 233B.050, this regulation updates NAC 445B.875 to NAC 445B.895, the section governing practice before the State Environmental Commission (Commission) in contested cases (NRS 233B.121). The proposed regulation requires that an appeal be based on the standard of review grounds set forth in NRS 233B.135(3); it clarifies briefing, witness and exhibit requirements; it establishes procedures for prehearing conferences; it limits the type of evidence heard by the Commission

during the appeal hearing; it allows dismissal of appeals in certain circumstances; and it clarifies the status of attorneys allowed to appear before the Commission in contested cases. Overall the regulation is designed to reduce the time and resources needed to conduct appeals by the Commission.

Ms. Rose Marie Reynolds, counsel to the Commission, presented this regulation.

Ms. Reynolds reminded the Commission that it had directed staff at the November 7, 2011 SEC meeting to proceed to amend the rules of practice. She noted the SEC staff held a workshop on February 7, 2012 ([hear audio file](#)) and as a result the draft regulation before the Commission contained changes to the original LCB draft regulation R135-11. Ms. Reynolds then proceeded to give the Commission a section by section analysis of the proposed changes. ([hear audio file at:207.48](#)).

Chairman Gans proceeded by asking fellow Commissioners for questions about the regulation. Commissioner Porta asked about the effective date of the regulation if approved. Ms. Reynolds said the regulation would become effective when approved by the Legislative Commission.

Hearing no additional comments from the Commission, Chairman Gans asked for public comments whereupon Mr. Dan Galpern (representing the Sierra Club and the Moapa Band of Paiutes) addressed the Commission. Mr. Galpern made some general comments about language in the regulation that would allow the Commission to restrict consideration of certain evidence during an appeal hearing and/or place the burden of demonstrating that such evidence is relevant on the public. Commissioner Landreth noted, however, that the purpose of the proposed language was to address situations where parties might “sit on information” potentially relevant to an agency decision, and yet the agency was never availed of such information during the decision making process. Commissioner Porta followed by saying the proposed language provides a level of fairness to the agency in its decision making process. Chairman Gans said during an appeal if new information is introduced that was not available to the Division, it puts the Commission in a position of substituting the Commission’s judgment for that of the Division, when the Division is in fact the expert.

Next Jasmine Mehta, Counsel for the Division, addressed the Commission and reminded everyone that the language in the regulation, concerning how new evidence would be handled in an appeal hearing, was discussed at the February 7, 2012 workshop. She also said that at the workshop other industry representatives provided input that resulted in language acceptable to all the participating parties. She noted the language in the regulation also allows the Commission to consider reasonable cause in a decision to accept (or not) new information during an appeal hearing.

Additional comments were provided to the Commission by Dan Galpern regarding page limits for briefs in section 7 of the proposed regulations and the timeframe and circumstances for dismissing an appeal in section 8.

Next Ms. Debby Leonard, on behalf of Jungo Land and Investments, addressed the Commission. Ms. Leonard stated she was a participant in the February 7, 2012 workshop and that the proposed regulation now provides a good framework that will make appeal hearing work better as well as be less expensive. She also said she supported the language about accepting or not accepting new information in an appeal (i.e., based on a decision of reasonable cause), where such information was not considered by the Division in its decision making process. She said the Commission should not be put in a position of second guessing the Division on technical matters. She also addressed the issue about discovery and acknowledged that both the statutes and the Commission's rules were silent on whether or not discovery would be allowed in an appeal setting. The Commission's counsel responded, noting that in such cases a prehearing conference would be convened to address the type of discovery allowed.

Commissioner Gans called for any additional public comments on the regulation, whereupon Mr. Allen Biaggi representing the Nevada Mining Association (NMA) addressed the Commission. Mr. Biaggi noted that NMA had participated in the February 7, 2012 workshop and he expressed his satisfaction with how NMA's input was subsequently received.

Finally Mr. Thomas Woodworth, counsel for NV Energy, addressed the Commission. Mr. Woodworth also noted that NVEnergy had participated in the February 7, 2012 regulatory workshop and now supports the final draft of the regulation. He said his company has provided written comments on the proposed regulations. (See attachment 3 Letter of Support dated February 15, 2012.)

Chairman Gans closed the public comments period for the proposed regulation and asked the Commission if they had any additional concerns. Commissioner Porta acknowledged that Mr. Galpern's comment about page limits for reply briefs was correct and the regulation should be amended accordingly. Commissioner Landreth expressed her concern about the mandatory dismissal of an appeal after a year of inactivity. Commissioner Coyner proposed changing the language from "must dismiss" to "may dismiss" in section 8, subsection 4.

Motion: Hearing no further public comment on the matter, Chairman Gans asked for a motion from the Commission. Commissioner Porta moved for acceptance of the amended regulation (LCB File #R135-11) with the following two changes: (1) in Sec. 7 the length of the reply brief in subsection 2(c) is changed from 5 to 10 pages; and (2) in Sec. 8 the word "will" dismiss an appeal is changed to "may" in subsection 4. The motion was seconded by Commissioner Coyner and passed unanimously.

11.) Administrator's Briefing to the Commission: NDEP's Administrator Colleen Cripps briefed the Commission about recent personnel changes at NDEP. She advised the Commission that in

December Mr. Jim Najima retired as the Bureau Chief of Corrective Actions and was recently replaced Mr. Greg Lovato. She provided the Commission with additional background about Mr. Lovato including the fact that he was a former employee of US EPA.

Administrator Cripps then advised the Commission about changes in Governor Sandoval's implementation of Executive Order 01 (Review of State Regulations). She said that while the order is no longer in effect, executive branch agencies will still be required to inform the Governor's office of regulatory action in advance of existing noticing requirements, although she didn't expect the change would create any undue burdens. She also said that NDEP had concluded most of the regulatory review work required under the Governor's Executive Order with only a few exceptions, which will be dispensed with at the June SEC meeting.

Chairman Gans then ask about the workload caused by interim committees of the legislature on NDEP. Administrator Cripps said the Division is working with committees on recycling, Lake Tahoe and the new mining oversight committee. Finally she said NDEP is running a low vacancy rate (5%) and staff is doing excellent work.

Commissioner Anderson asked for an update on activities at the copper mine in Yerington. Mr. Dave Emme provided the Commission the historical background about cleanup activities at the site as well as re-mining of existing mineral resources.

12) Public Comment: Non-Action Item

No comments.

Chairman Gans confirmed with Mr. Walker that the next meeting date will be on June 12, 2012.

13) Meeting was adjourned.

ATTACHMENTS

- ATTACHMENT 1: Penalty Assessment: This attachment contains the penalty assessment table describing each of three specific penalty assessments.
- ATTACHMENT 2: March 05, 2012 SEC Decision: Public Petition Moapa Band of Paiutes and Sierra Club Submitted Pursuant to NRS 233B.120
- ATTACHMENT 3: February 15, 2012 Letter of Support from NVEnergy - Proposed Regulations of the State Environmental Commission
LCB File No R135-11

NDEP-BAPC PENALTY RECOMMENDATIONS - February 15, 2012

TAB NO.	COMPANY NAME	VIOLATION & PENALTY SUMMARY	NOAV NUMBER	RECOMMENDED PENALTY
4a	Refuse Inc., Storey County	<p><u>NOAV 2330</u> Violation: Failure to comply with a permitted operating limit Production Limit: 110 tons/hour Emission Unit : Asphalt Grinding Circuit</p> <p>Base Penalty: \$1,000, for Class 1 Source Magnitude (Multiplier): 1 Emission Unit for 28 Days (28x) Violation History (Adjustment): No Violations within past 60 months Total Penalty: \$1,000 x 28 = \$28,000</p>	2330	\$28,000
4b	California Rock Crushers, Storey County	<p><u>NOAV 2380</u> Violation: Failure to conduct required monitoring and recordkeeping Requirement: Monitor and Record throughput and hours of operation on a daily basis Emission Unit : Crushing and Screening Plant</p> <p>Base Penalty: \$600, for Class 2 Source Magnitude (Multiplier): 1 Emission System for 5 months (5x) Violation History (Adjustment): No Violations within past 60 months Total Penalty: \$600 x 5 = \$3,000</p> <p><u>NOAV 2381</u> Violation: Failure to comply with a permitted operating limit Production Limit: 400 tons/hour Emission Unit : Crushing and Screening Plant</p> <p>Base Penalty: \$600, for Class 2 Source Magnitude (Multiplier): 1 Emission System for 4 Days (4x) Violation History (Adjustment): No Violations within past 60 months Total Penalty: \$600 x 4 = \$2,400</p>	2380 and 2381	\$5,400

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2
3 In Re:)
4)
5 -- Public Petition --)
6 Moapa Band of Paiutes and Sierra Club)
7 Submitted Pursuant to NRS 233B.120)

DECISION

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

14 The petition requested a declaratory order from the Commission that it had jurisdiction
15 to conduct a contested case hearing over, and to decide Petitioners' appeal of, Landfill Permit
16 LF006-CMF-01 issued by the Southern Nevada Health District to NV Energy. Petitioners cited
17 NAC 444.748(2) as the basis for jurisdiction: "Any person who wishes to appeal from a
18 decision or action of the solid waste management authority may do so. Such an appeal must
19 be made in writing in accordance with the State Environmental Commission's procedural
20 rules." Solid waste management authority is defined in NRS 444.495 as "(1) the district board
21 of health in any area in which a health district has been created . . . , if the board has adopted
22 all regulations that are necessary to carry out the provision of NRS 444.440 to 444.620,
23 inclusive" and (2) "[i]n all other areas of the State, the Division of Environmental Protection of
24 the State Department of Conservation and Natural Resources."

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

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

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

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

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

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

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

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

8 Dated this 5th day of March, 2012.

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12 Alan Coyner, Vice Chairman
13 State Environmental Commission
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CERTIFICATE OF SERVICE

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

Dan Galpern, Staff Attorney
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401

Christopher Mixson
Wolf, Rifkin, Shapiro, Schulman & Rabkin
3556 East Russell Rd.
Las Vegas, NV 89117

Attorneys for Petitioners Sierra Club and Moapa Band of Paiutes



John B. Walker, Executive Secretary
State of Nevada, State Environmental Commission



February 15, 2012

Mr. John B. Walker
State of Nevada
State Environmental Commission
901 S. Stewart Street, Suite 4001
Carson City, Nevada 89701-5249

Re: Letter of Support – Proposed Regulation of the State Environmental Commission
LCB File No R135-11

Dear Mr. Walker:

Through this letter, we wish to go on record as supporting the amended language in the proposed Rules of Practice for the State Environmental Commission, LCB File No R135-11 which will be presented as Agenda Item 10 at today's public hearing.

Specifically, we offer our support owing to the fact that this regulation is designed to reduce the time and resources needed to conduct appeals by the Commission. In addition, by clarifying the standard of review, defining procedures for briefs, and addressing the admission of evidence during appeal hearings, the proposed regulation has been designed to streamline the appeal process for all parties, including Nevada businesses, which is much appreciated.

Thank you for the opportunity to submit this letter.

Sincerely,

A handwritten signature in black ink that reads "Starla Lacy".

Starla Lacy
Executive, Environmental, Health and Safety

Cc: file