

STATE ENVIRONMENTAL COMMISSION (SEC)
Meeting of June 10, 2005
Department of Conservation & Natural Resources
Carson City, Nevada

MEMBERS PRESENT:

Alan Coyner, Vice Chairman
Terry Crawforth
Lewis Dodgion
M. Francis Sponer
Don Henderson
Ira Rackley
Hugh Ricci
Harry Shull

MEMBERS ABSENT:

Melvin Close, Chairman
Demar Dahl
Pete Anderson

Staff Present:

David Newton, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Chairman Mel Close was absent, so Vice Chairman Coyner called the meeting to order at 10:00 a.m.

READER'S NOTE: These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC [Recording Secretary](#) for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Vice Chairman Coyner introduced new Commissioner M. Frances Sponer from Las Vegas and asked her to tell everyone a little about herself. Commissioner Sponer said she is originally from a location near Morgantown, West Virginia. She is a registered nurse, has a Bachelor's and Master's Degree in Business Administration. She is a business person, entrepreneur, and has had several businesses over the years. At this time she has an insurance company, a third party administrator, a warranty business, and a pharmacy benefit management company. She moved to Las Vegas in 1985, is on the Board of Health, the AIDS taskforce, is on the board of a local bank and on the library commission. Regarding SEC membership, Ms. Sponer represents the State Board of Health.

Vice Chairman Coyner also introduced David Newton as the new Deputy Attorney General.

I. Approval of Minutes from the November 30, 2004 SEC Meeting

Vice Chairman Coyner said he had some corrections for the minutes and asked if anyone else had suggestions. Commissioner Sponer had a couple of questions but they will be answered later in the meeting.

Vice Chairman Coyner had one correction on page 10, on the 4th paragraph, the name Ormat is spelled with two t's, instead of one. And in the next paragraph, Miss Morris was referred to as Ms. Ricci.

Commissioner Rackley commented on page 3, the first paragraph under Staff Discussions, the minutes read, "it is not made for vehicles that are over with dual wheels." A slight discussion amongst the Commissioners resulted in an acknowledgement that the minutes should read, "it is not made for vehicles that are over width or with dual wheels."

Vice Chairman Coyner asked for a motion to accept the November 2004 minutes with the corrections. Commissioner Rackley made a motion, Commissioner Sponer seconded the motion, and all were in favor.

II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS

Vice Chairman Coyner asked if there were any members of the public that wished to address the NOAVs. There were none so he asked the Division to continue with a brief summary of the five settlements that are under consideration today.

Mike Yamada, Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ) approached the podium. Mr. Yamada spoke about the settlement agreements for Air Pollution Control violations by the following five companies:

- A. Brown Brothers Construction – Notice of Alleged Violation No. 1859**
- B. RMC Nevada - Reno Sparks Ready Mix – Notice of Alleged Violation Nos. 1908**
- C. RMC Nevada - All-Lite Aggregates– Notice of Alleged Violation No. 1961**
- D. W. E. S. Construction – Notice of Alleged Violation No. 1915**
- E. Royal Sierra Extrusions. – Notice of Alleged Violation No. 1919**

Vice Chairman Coyner asked if there were any questions. Commissioner Dodgion stated he thought the fine of \$600.00 for Brown Brothers Construction was pretty light, as they have a history of non-compliance, and failed to cease and desist when issued a Stop Work Order. Commissioner Dodgion expressed concern over Royal Sierra Extrusions, who does not have the history of non-compliance or previous penalties in comparison with Brown Brothers Construction, yet Royal Sierra Extrusions is fined more than twice as much as Brown Brothers Construction.

Mr. Yamada said the Brown Brothers Construction was having some communication problems between the owner and the people running the operation. Mr. Yamada added that if they had purposely decided to not comply with the regulations, they would have been fined higher. Mike Yamada stated that this company's permitting is done through an environmental permitting firm.

Commissioner Sponer asked if staff has authority to vary the penalties or if there are set penalties. Mr. Yamada explained that only major violations appear before the Commission and they have a Penalty Matrix that is patented after the EPA's Penalty Matrix. He offered to go over the variables with Commissioner Sponer.

Mr. Yamada further stated that the Commission can disagree with the Division's fees and can change them. Commissioner Sponer asked about the base penalty amount. Mike Yamada explained that the fees can start at \$600.00 per day and can be raised or lowered from that point, based on past violations from the company or if they have shown and effort to comply.

Commissioner Crawford stated his frustration with the Commission's inability to raise the fine amounts if the Division has already made an agreement with the company and without the defendant being made aware that an increase is possible. He further commented that Brown Brothers Construction and WES Construction are not paying attention to the NOAVs, and they need to comply in the future or they may have larger penalties. He added that Brown Brothers should not have any violations since they have an environmental permitting firm.

Vice Chairman Coyner said the Commission could withhold the settlement and remand it back to the Division for re-negotiation.

Commissioner Dodgion added that the Commission has the authority to reject the settlement and require the violator to appear before the Commission and to hold an Evidentiary Hearing to establish a penalty. The Commission has the authority in Statute to establish the penalty. This is delegated to the Division to negotiate and is subject to the Commission's approval of it.

Commissioner Henderson asked where the fines go. Mike Yamada said the fines go to the school district in which the violation was committed. The fines do not go to the Division.

Vice Chairman Coyner asked new Commissioner Sponer if she would have difficulty voting on the issues since she was not familiar with the Fugitive Dust definition. She said she would but she will have the definition soon.

Vice Chairman Coyner asked for a motion to accept any or all of the issues. Commissioner Crawford recommended acceptance of staff recommendations for violation numbers 1859, 1908, 1961, 1915, and 1919, with a special note that Brown Brother's Construction and WES Construction be advised that they must be in compliance or face higher penalties.

Commissioner Dodgion seconded the motion. Commissioner Ricci asked how the Division would let these two companies know they are on notice with the Commission. Mike Yamada said they would send a letter to the companies. Mike Elges, Chief of the Bureau of Air Pollution Control, entered into the discussion, as did Commissioner Crawford.

NOTE: Letters to the construction companies can be viewed in Appendix 1.

Vice Chairman Coyner reiterated the final agreement amongst the Commission and the Division regarding WES Construction and Brown Brothers Construction. That agreement is that the Division will give them a written letter that the Commission will require them to appear in person for at least the next violation. When asked for a vote to proceed with this agreement, all members agreed.

Air Pollution Control

Petition 2005-02 - Revised Air Pollution Control Regulations To Meet Federal Planning Requirements. The regulatory changes are necessary to supplement the February 2005 submittal of Nevada's Applicable State Implementation Plan (ASIP) to EPA, allowing EPA to approve the updated ASIP.

The proposed regulation will revise several sections in the permitting provisions of NAC 445B. It will add provisions to ensure good engineering practice regarding stack height and emission limitations, require Prevention of Significant Deterioration review when relocating certain fossil-

fueled power generating units, and update and clarify environmental evaluation information requirements. Additionally, the regulation will remove Director's discretion for dealing with the handling of organic solvents and other volatile compounds, add a timeframe for the State's response to requests for technical advise regarding plans for construction or modification of a facility, and increase the time allowed for the State to respond to a request from a source to determine whether an action constitutes construction or modification. Finally, the proposed regulation will modify the requirements for a Class II application for revision of an operating permit, to include information on actual emission rates. Other changes include correcting certain redundant provisions and making several clarifications, technical corrections and updates.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law.

Discussion:

Greg Remer, Acting Supervisor with the Bureau of Air Pollution Control Permitting Program spoke about this petition.

NOTE: A copy of the outline of Greg Remer's presentation is included as appendix # 1.

Commissioner Crawford asked why the Division was choosing to make this a temporary regulation instead of making it a permanent regulation. Greg Remer explained that the EPA was reviewing the SIP (State Implementation Plan) and making this a temporary would allow for any changes from the EPA to be made before making the regulations permanent. This regulation would have to be made permanent by November 3, 2005.

Public Comments / SEC Discussions & Staff Responses

Commissioner Sponer asked about the air quality jurisdiction for Clark and Washoe Counties. Greg Remer said this is described in State Statute where it says any county with a specified population size has to have their own air quality program. There is an exception to the jurisdiction in the counties where the State maintains primacy and that is for fossil fuel fired steam generating units regardless of the county they are in.

Commissioner Sponer asked how staff communicated with the counties regarding air quality. Mike Elges commented that the programs that are established by that Statute have to be approved by the SEC. This approval process happens prior to adoption by the counties.

Mike Elges added that the difficulty comes in when the Federal EPA says that a state must develop a SIP; a plan by which air quality is managed, and there are subsets of authority within the State that actually carry out that function. The Division refers to Nevada's SIP as "Nevada SIP," and the "State SIP" is the State component that the Division deals with verses the other components of the SIP that Washoe and Clark Counties deal with. When the EPA talks about the "Nevada SIP," they are referring to a compilation of everything. The State role/obligation is to administer air quality requirements, driven primarily by statute. Then there is a separate clean air act requirement under the federal government that requires a plan to maintain the ambient air quality standards.

Colleen Cripps, recently promoted to Deputy Administrator, added that the counties do play a role and they do adopt county ordinances related to bringing non-attainment areas back into compliance. The ordinances the counties adopt do become a part of the Nevada SIP, they have their own control measures to bring areas back into compliance. From the State perspective, the counties have been delegated that authority and they do that through their county commissions. If the counties fail in that authority, then it falls back to the State, who would be responsible for ensuring compliance in the county. If the State fails, then it would go back to the federal government, ie- US EPA.

Colleen Cripps continued by saying when the county adopts the State ordinances, they must be at least as strict as the State requirements that are adopted. Ms. Sponer asked how the Division would know if a county fails in this. Ms. Cripps said they communicate with the counties, look at the monitoring they do, and the compliance within the county. All of the non-attainment SIPs that are developed through the county come through the State. The Division reviews them and forwards them to the EPA.

The counties also report directly to the EPA. If the EPA feels the counties are not fulfilling their responsibilities, then the authority can be removed from the county and given to the State.

Commissioner Henderson wanted to know what the differences are between the federal and State statutes. Deputy Administrator Cripps responded by explaining that once regulations get incorporated into the State Implementation Plan they become federally enforceable. This makes it very difficult if changes need to be made because it has to go back through this whole federal process.

PUBLIC COMMENT

Russell Fields, President of Nevada Mining Association, complimented the Division staff for their assistance and willingness to interpret regulations for them. Mr. Fields recommends this regulation and is very thankful for the Bureau of Air Quality for their hard work.

Vice Chairman Coyner asked if there were any other public comments. There were none.

SEC ACTION

Vice Chairman Coyner asked if there were any questions from the Commission. When there were none, Mr. Coyner asked for a motion. Commissioner Dodgion made a motion to adopt petition 2005-02 as presented, Commissioner Ricci seconded the motion, and all were in favor.

Mining Reclamation

Petition 2005-01 - Mining Reclamation Permit Modification and Fee Adjustments. This is a temporary regulation proposed by the Bureau of Mining Regulation and Reclamation of the Nevada Division of Environmental Protection. The proposed temporary regulation provides for changes to the NAC 519A mining reclamation regulations. Under the proposed regulation, changes include a revision to the current fee structure for a permit modification and definition of minor modification. The proposed revision also defines a major modification. The revision to the current fee structure will reduce the fees charged for simple changes to the permit that require

minimal staff time to review and process. The other proposed revisions set clearer parameters to define minor and major modification.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law. As noted above, a revision to the current fee structure is proposed and would reduce fees charged for simple permit changes.

Discussions

Dave Gaskin, Chief of the Bureau of Mining Regulation & Reclamation, spoke about Petition 2005-01. He explained that they would like to get this implemented quickly as industry is holding back on their proposed modifications to their permits, and their work season is during the summer.

Mr. Gaskin addressed Commissioner Crawford's previous question about the benefit of making regulations temporary versus permanent. He said in this case the Division is attempting to move quickly because some companies are holding back on submitting their proposed modifications to their permits until this goes through. This is the construction season for these companies.

Mr. Gaskin said they have been working with the Nevada Mining Association for over a year and have precise wording for this regulatory revision. There have been workshops, beginning in early February, in Elko, Carson City, and Winnemucca. There have been a lot of positive comments and no negative comments.

There are 3 major parts to this petition, and the main impetus for this revision is that industry was looking for a parallel in the reclamation branch to an option we have in the regulation branch for water pollution control permits. In this option, there is a major and minor modification, and an engineering design change, which is less than a minor modification. It is a small fee category for small changes. And the reclamation branch did not have this third option, which this change will incorporate.

Also, the definition for major modification did not exist in the definition section but the criteria was in one of the regulations. Mr. Gaskin noted that this Commission had previously requested a formal definition for major modification. At the same time, clarification for minor modification will be added to assist with distinction between the two. The Bureau did work closely with industry in determining the criteria.

Mr. Gaskin said there is an acreage threshold. Ten acres is the threshold for putting a change in as a minor modification category and that would go up to 25% of the total acreage for the approved plan, and if it exceeds that, it would implement a major modification of the permit.

Another change under the regulation was to specify that a change to post mining land use would be considered a minor modification. In the past, it was considered a major modification but we do have a lot of operators coming in that would benefit from a positive post mining land use, be it alternative energy or waste disposal.

After Chief Gaskin finished talking about the proposed changes, he offered to answer any questions.

SEC Discussions & Staff Responses

Vice Chairman Coyner asked if there were any questions, to which Commissioner Crawford responded by asking about the language that mentions visual appearance. Mr. Gaskin said it was in the statutory language and has not been an issue, therefore it was decided to remove it.

Commissioner Crawford asked about the fees and if there was a difference in fees for exploration. Mr. Gaskin explained the fees in relation to size of acreage, and there is no difference for exploration.

Commissioner Henderson requested confirmation that the federal government also permits exploration, as does the State, and if the requirements are similar. Mr. Gaskin described the difference, that the federal government does not charge fees so they do not have categories. The federal government looks to see if there is a need for an environmental assessment or environmental impact statement.

When there were no more questions, Vice Chairman Coyner asked for Public Comments.

PUBLIC COMMENTS

Russ Fields, President of the Nevada Mining Association, said they have been working with the Mining Bureau for about a year on some of the changes in this petition. Mr. Fields complimented the Mining Bureau and said The Nevada Mining Association supports this petition.

After no other public comments, Vice Chairman Coyner asked for a motion from the Commission.

SEC ACTION

Commissioner Sponer made a motion to accept Petition 2005-01 as submitted by staff. Commissioner Crawford seconded the motion. The motion was unanimous; all were in favor.

Vice Chairman Coyner asked Mr. Elges to give Commissioner Sponer an explanation she had previously requested. Mr. Elges stated the explanation is in NAC 445B.075 and described Fugitive Dust.

Another question from Commissioner Sponer was regarding the SIP, and whether or not it was on the EPA's website. Mr. Elges and Deputy Administrator Cripps gave a brief overview of the SIPs, that each state may have many, and that the age of the SIP causes some difficulty in having the SIP available on-line. Nevada SIP is for rural areas, and this would be for the vast majority.

Regarding other counties, State statute does not allow the counties to regulate steam-electric facilities, and the county SIPs are not on the EPA website either.

Colleen Cripps stated that the EPA was going to wait until the SIPs are approved, then put them on their website. The EPA does have a name for people to contact to get copies of SIPs.

Commissioner Sponer was concerned about SIPs in Clark County that pertain to fugitive dust, which is difficult on citizens with lung problems. Deputy Administrator Cripps stated that the Division does have a copy of the PM10 SIP, which is related to the fugitive dust, and this SIP was approved last year. These SIPs are also on the County website.

Commissioner Sponer suggested that every 2 years or so, Washoe and Clark Counties come to a meeting and let the Commission know of the non-attainment variances in their counties.

Before continuing the discussions with NDEP Administration, Vice Chairman Coyner asked if anyone had public comments to be heard. With no response, Mr. Coyner opened the meeting for discussion with the Administration.

NDEP Administrator Leo Drozdoff, Deputy Administrators Tom Porta and Colleen Cripps spoke with the Commission. Regarding Commissioner Sponer's interest in the Air regulations, Mr. Drozdoff said the Division is working on a positive relationship with Washoe and Clark counties. He wants to ensure they know they are not being looked at negatively, just as a way for the Commission to gain knowledge of their programs.

Commissioner Crawford agreed with Commissioner Sponer regarding meeting with Washoe and Clark counties.

NDEP Administrator Drozdoff talked about the duties of the two Deputy Administrators. Tom Porta oversees the Bureaus of Water Pollution Control, Water Quality Planning, Mining, Corrective Actions, and Safe Drinking Water. Colleen Cripps is responsible for Air Pollution Control, Air Quality Planning, Federal Facilities, and Waste Management.

Mr. Drozdoff also talked about regulations that will be new because the Safe Drinking Water Program recently became a part of NDEP. There will be a lot of temporary regulations that will need to be approved. There are a lot of small communities water systems and private water systems that do not meet the Safe Drinking Water Standards. Leo Drozdoff explained several regulations that may come up in the near future.

Vice-Chairman Coyner asked for a motion to close the meeting. A motion was made by Commissioner Crawford, and seconded by Commissioner Shull. The meeting closed at 12:50 p.m.

APPENDIX

- 1) Letters to Brown Brother's Construction and W. E. S. Construction
- 2) Greg Remer's Presentation

Leo Drozdoff, Administrator
(775) 687-4670
Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684

Safe Drinking Water
Facsimile 687-5699

Mining Regulations & Reclamation
Facsimile 684-5259

State of Nevada
KENNY C. GUINN
Governor



ALLEN BAGGI,
Director

Air Pollution Control
Air Quality Planning
Facsimile 687-6396

Waste Management
Federal Facilities

Corrective Actions
Facsimile 687-8335

NDEP.nv.gov

**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION**

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

September 7, 2005

Mr. Ben Maddox
Brown Brothers Construction
5990 Morgan Mill Road
Carson City, Nevada 89701

RE: Notice of Alleged Violations – State Environmental Commission Hearing of June 10, 2005
Air Quality Operating Permit No. AP 1442-1354

Dear Mr. Maddox:

On June 10, 2005, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP/BAPC) presented negotiated settlement for the Brown Brothers Construction's Notice of Alleged Violation (NOAV) No. 1859 to the State Environmental Commission (SEC). The SEC adopted the negotiated settlement for NOAV No. 1859 but further instructed NDEP/BAPC to inform Brown Brothers Construction that any further violations of its permit or the Nevada Administrative Code (NAC) would require an appearance of Brown Brothers before the SEC.

The SEC is concerned about the number of violations assessed against Brown Brother Construction for violations of the NAC.

This letter is to formally inform you that the SEC will require that a representative of Brown Brothers Construction appear before the SEC for any future violations of Air Quality Operating Permit AP1442-1354 or the Nevada Administrative Code (NAC 445B.001 – NAC 445B.3495).

If you have any questions regarding this issue, please contact me at 687-9342.

Brown Brothers Construction
September 7, 2005
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Sincerely,

Michael Yamada, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

MY

cc: Larry Kennedy, NDEP
John Walker, SEC
Carson City Board of Supervisors

Route to: Michael Elges, NDEP
Greg Remer, NDEP

Certified Mail # 7003 2260 0003 2621 5867

Leo Drozdoff, Administrator

(775) 687-4670
Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684
Safe Drinking Water
Facsimile 687-5699

Mining Regulations & Reclamation
Facsimile 684-5259

State of Nevada
KENNY C. GUINN
Governor



ALLEN BIAGGI, Director

Air Pollution Control
Air Quality Planning
Facsimile 687-6396

Waste Management
Federal Facilities

Corrective Actions
Facsimile 687-8335

NDEP.nv.gov

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

901 South Stewart Street, Suite 4001

Carson City, Nevada 89701

September 7, 2005

Mr. Roy Walker
W.E.S. Construction, Inc.
445 Parr Circle
Reno, NV 89641

RE: Notice of Alleged Violations – State Environmental Commission Hearing of June 10, 2005
Air Quality Operating Permit AP1442-1415

Dear Mr. Walker

On June 10, 2005, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP/BAPC) presented negotiated settlement for W.E.S. Construction, Inc.'s Notice of Alleged Violation (NOAV) No. 1915 to the State Environmental Commission (SEC). The SEC adopted the negotiated settlement for NOAV No. 1915 but further instructed NDEP/BAPC to inform W.E.S. Construction, Inc. that any further violations of its permit or the Nevada Administrative Code (NAC) would require an appearance before the SEC.

The SEC is concerned about the number of violations assessed against W.E.S. Construction, Inc. for violations of the NAC.

This letter is to formally inform you that the SEC will require that a representative of W.E.S. Construction, Inc. appear before the SEC for any future violations of Air Quality Operating Permit AP1442-1415 or the Nevada Administrative Code (NAC 445B.001 – NAC 445B.3495).

If you have any further questions about the violation, please contact me at (775) 687-9342.

Mr. Walker
September 7, 2005
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Sincerely,

Michael Yamada, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

MY

cc: Jason Dunphy, NDEP
John Walker, SEC
Storey County Board of Commissioners

Route to: Michael Elges, NDEP
Greg Remer, NDEP

Certified Mail # 7003 2260 0003 2621 5874

APPENDIX 2

Greg Remer's presentation

State Environmental Commission Mtg.

June 10, 2005

Good morning Mr. Chairman, members of the commission, my name is Greg Remer. I'm acting permitting supervisor with the Bureau of Air Pollution Control. I'm here this morning to present proposed changes to the air quality regulations contained in Petition 2005-02 (Item IV on the Commission's agenda). The basis for the proposed changes relate primarily to Nevada's SIP. Any amendments adopted under this petition will be temporary.

Before I go into the petition, I would like to provide the members with a brief overview of the SIP.

As you may know, over the past several years, NDEP has been working closely with USEPA Region IX and representatives of Nevada's various industries to update Nevada's SIP. The SIP is required by the federal Clean Air Act and is essentially a document by which the EPA and the State agree to preserve, protect and, if necessary, bring into compliance all areas of the state with the air quality standards. A significant portion of the SIP consists of Nevada's (as well as Clark and Washoe Counties') air quality regulations. The most recent significant regulation update for Nevada's portion of the SIP occurred in 1982. Because the Nevada air quality regulations have changed since 1982, the major focus of the recent SIP update process has been to bring Nevada's SIP consistent with the current Nevada Administrative Code. This on-going effort has resulted in a number of previous changes to the NAC.

I'm here today to present proposed regulation changes related to our near-final efforts in the SIP update process. The changes proposed today represent responses to a few out-standing deficiencies identified by EPA. I would also like to point out that NDEP did submit a SIP update package to EPA in February for their review and approval. The SIP submission was also included as an information item at November 2004 commission hearing. The proposed changes in Petition 2005-02 will, when submitted to EPA, make the SIP package more approvable by EPA.

The agency held a workshop in Reno on May 12th, to solicit comments and input on the proposed revisions. Approximately, 10 people attended the workshop. No adverse comments were received at the workshop.

Sections 1 through 5

Sections 1 through 5 of the Petition request addition of new definitions related Good Engineering Practice Stack Height (or GEP). This is a federal term and it ensures that if a source builds a stack taller than GEP allows, only the part of the stack that is equal to (or less than) GEP is allowed to be considered in the dispersion modeling analysis to determine compliance with the ambient standards.

Sections 6 through 9

Sections 6 through 9 involve proposed changes to existing definitions. All of these definitions were identified by EPA as containing impediments to EPA SIP approval. Section 6 proposes to strike language from the definition of "Allowable Emissions".

Section 7 proposes changes to the definition of “Construction”. The changes make the language more consistent with EPA’s definition and thereby approvable by EPA.

Section 8 proposes changes to the “Excess Emissions” definition. The change relates to the addition of what EPA calls credible evidence. Credible evidence allows the consideration of alternative methods of determining compliance with the air regulations other than a standard stack emission test.

Section 9 proposes changes to the “Regulated Air Pollutant” definition. The current definition was not consistent with EPA’s definition and the proposed change would make this definition consistent.

Sections 10 through 12

Sections 10 through 12 propose technical corrections to the metric form of the emission standards. It appears that the conversion from English to metric units was flawed, so we are proposing to correct that mistake.

Sections 13 and 14

Section 13 is a regulation that prohibits construction of new power plants or modification of existing power plants in the Las Vegas area. The correction to the rule involves ensuring that any existing steam unit at Clark or Sunrise stations that might be relocated elsewhere, must meet the Nevada air regulations to do so.

The changes to Section 14 are related to striking Director’s discretion, which is also an EPA SIP approval issue.

Sections 15 and 16

Sections 15 and 16 allow sources to request the agency for determination of construction and review of plans. The current regulation specified no time frames for the determination or review. The proposed regulation change specifies 60 days for the agency to respond.

Section 17

There are two distinct proposed changes to Section 17. First, we are proposing to remove specific regulation section references. Section 17 is included in the SIP submittal, but the referenced regulation sections within Section 17 were not submitted with SIP. As a result, they created hanging references, which cause problems with EPA’s review of the SIP. Removing the references or replacing them with general references to the entire set of air regulations will allow EPA to approve Section 17 into the SIP.

Second, subsection 4 of this regulation has a potential to conflict with the procedures contained in other parts of the air quality regulations pertaining to permitting and the processing of modifications. As a result, we propose to strike subsection 4 and allow the permitting procedures for modification to take priority.

Sections 18 and 19

Section 18 contains three proposed changes. First, we are proposing to clarify that the requirements of subsection 1 only apply in attainment areas.

Second, we are proposing to add a subsection 3 that ties with the new GEP definitions from

Sections 2 through 5 earlier. This change will not allow the Director to issue a permit or a revision to a permit if the modeling considers stack heights above the GEP stack height. Federal regulations require this for SIP's, as well.

Third we are proposing to strike re-numbered subsection 10 and move it a more appropriate place in Section 19. This is to make clear that in all cases, an environmental evaluation is performed prior to issuance of the operating permit. Moving subsection 10 to Section 19 just relates to who will do the analysis, not whether one is done or not.

Section 20

Section 20 relates to the content of the environmental evaluation. The changes to this section primarily relate to the information the Director considers in an air quality analysis that supports the issuance of an operating permit. There is also a GEP related requirement here as well. The remainder of Section 20 amends existing language to clarify the EPA modeling methods allowed and bring up-to-date the information considered in a modeling analysis, including meteorological data required to support the analysis.

Section 21

Section 21 is proposed to be revised to remove another hanging reference which would, again, be problematic for EPA in the SIP approval process.

Section 22

Section 22 proposes to remove another hanging reference. In addition, the term "allowable" is proposed to be deleted from the language. Since this section has been submitted to EPA as part of the SIP submittal, EPA indicated that federal requirements dictate that determinations of modification cannot be made using allowable (or permitted) emissions rates. Striking the term "allowable" will remove an impediment for EPA to fully approve this section.

Section 23

Section 23 is the final proposed amendment section and deletes the definition of "air contaminant". This definition is no longer used in the air quality regulations.

With that, we recommend that the Commission approve the changes as proposed in Petition #2005-02. I'd be happy to answer any questions. Thank you.