

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

**Meeting of May 24, 2007**

By Teleconference from  
The Bryan Building, 901 S. Stewart St., Carson City, Nevada  
and  
Office of the Nevada Division of Environmental Conservation  
2030 E. Flamingo Rd., Suite 230  
Las Vegas, Nevada

**Members Present:**

**Carson City**

Lewis Dodgion, Chairman  
Alan Coyner, Vice Chairman  
Pete Anderson  
Kenneth Mayer  
Ira Rackley  
Donna Rise  
Tracy Taylor

**Las Vegas**

Eugene Gans  
Harry Shull  
Stephanne Zimmerman

**Members Absent:**

M. Frances Sponer

**SEC Staff Present:**

David Newton, Dep. Atty. General  
Rose Marie Reynolds, Dep. A.G.  
John Walker, Executive Secretary  
Robert Pearson, Recording Sectry.

## **BEGIN SUMMARY MINUTES**

Chairman Dodgion called the meeting to order at 9:00 am, noting that this was the appointed time and that the meeting had been properly noticed. He welcomed the three new members of the Commission (since the previous meeting in September, 2006) and asked them to introduce themselves: Eugene (Jim) Gans of Las Vegas, said that he had been General Manager of the Clark Co. Sanitation District for almost 30 years and had been now with the Las Vegas Convention and Visitors Authority for the last eight years. Donna Rise, recently with the Montana Dept. of Agriculture, introduced herself as the new Director of the Nevada Dept. of Agriculture. Kenneth Mayer, formerly of the California Dept. of Fish and Wildlife, is the new Director of the Nevada Dept. of Wildlife.

The Chairman asked others present to introduce themselves and in Las Vegas were: Stephanie Zimmerman, SEC Commissioner, David Newton, Senior Deputy Attorney General and Rose Marie Reynolds, Deputy Attorney General (*SEC Commissioner Harry Shull arrived in Las Vegas later and was present for all votes below except the vote to approve the minutes of the September 6, 2006 meeting*). Also present in Las Vegas was a representative of the Southern Nevada Water Authority.

In Carson City, present were SEC Commissioners Tracy Taylor, Pete Anderson, Ira Rackley, Alan Coyner, Donna Rise, Kenneth Mayer and Lew Dodgion. SEC staff present were, John Walker, Executive Secretary and Robert Pearson, Recording Secretary.

Representing the Nevada Division of Environmental Protection (NDEP) were Leo Drozdoff, Administrator, NDEP, Colleen Cripps, Deputy Administrator, Jennifer Carr, Chief of the Bureau of Air Quality Planning, Doug Zimmerman, Chief of the Bureau of Safe Drinking Water, Mike Elges, Chief of the Bureau of Air Pollution Control, Larry Kennedy, Acting Supervisor of Compliance and Enforcement, Air Pollution Control, Adele Malone, Air Quality Planning Bureau, Janet Hess, Deputy Attorney General, and Bert Bellows, Dana Pennington and Jim Balderson, Bureau of Safe Drinking Water.

From the public were Don Tibbals, Lyon County Commissioner, Ziggy Vogelsberger, Atlas Contractors and Tom Young, County Engineer for Eureka County.

Chairman Dodgion noted that in the published meeting agenda it stated that agenda items might be taken in a different order than printed, and that he would move Item 2, the State Implementation Plan informational item, down to just after Item 4, Approval of Settlement Agreements. There were no objections.

He moved to Agenda Item 1, Approval of Minutes of the September 6, 2006 SEC Meeting and asked for any corrections or additions. Commissioners Gans and Zimmerman said they would abstain from the voting on this item since they had not been present at that meeting.

**Motion:** It was moved by Commissioner Coyner and seconded by Commissioner Rackley that the minutes be approved, and the vote was unanimous in favor.

Chairman Dodgion now moved to Agenda Item 3, Approval of Arsenic Rule Exemptions for the listed water systems. He noted that the practice in the past had been to treat these as a consent item, and asked if anyone present wished to speak on any specific water system listed. There were none, so he asked Doug Zimmerman to go through the list and added that the Commission would then take them up as a consent item.

Mr. Zimmerman said that three systems of the 20 on the list would be dropped from consideration—the Tahoe Reno Industrial Center had requested to be removed from the list as they had found an alternative method of meeting the standard, involving a simple water blending process. Commissioner Coyner asked for clarification on the arsenic level for the systems noted on list—it was agreed that on the handout it was mg/liter, not parts per billion . Mr. Zimmerman now gave the following presentation:

**(BEGIN PREPARED REMARKS BY DOUG ZIMMERMAN)**

Mr. Chairman, members of the commission for the record my name is Doug Zimmerman and I am the Bureau Chief for the Bureau of Safe Drinking Water, Nevada Division of Environmental Protection.

My presentation today addresses arsenic exemptions for public water systems regulated under Nevada's Public Water System laws and the federal Safe Drinking Water Act for which the Division is the primacy agency. The posted agenda lists a total of 20 systems but we will only be requesting you approve 17 today. The Tahoe Reno Industrial Center requested to be removed from the list – they have found a solution to their arsenic issue by blending of sources.

One of the requirements for receiving the exemption is that the system notify their customers of the date, time and place of this hearing where their exemption will be considered. We did not receive confirmation from CMC Steel Fabricators or from Pioneer Hills Mobile Home Park that this process had been completed. We made efforts to contact these systems, to find out what they had done, but we never received confirmation. So we are recommending that these two systems be removed from the consent calendar. That brings us to a total of 17 systems for consideration.

At the September 2006 SEC meeting the Commission approved exemptions for 36 public water systems, I know we have several new commission members at today's meetings so I planned on providing a brief overview of the exemption process and the basis for our recommendations and also I plan on addressing future actions and recommendations of the Division with respect to arsenic.

What is an exemption? An exemption is an extension of time from a compliance date, in this case the controlling date was January 23, 2006 when the new arsenic standard of 10 ppb became effective; its purpose is to allow systems additional time as set forth in a compliance schedule to evaluate financial and technical options to achieve compliance. The principal alternative to an exemption is an administrative order in which the system is found to be in violation of a drinking water standard and is put on a compliance schedule and required to evaluate financial and technical options to meet the standard. So the principal difference between the two is that under an Order a violation is entered into the federal data base used for tracking compliance of water systems. Notification requirements to customers of the systems are very similar under both actions and actually under the exemption process this hearing is a requirement that does not exist with the Order process. Exemptions are a process by which a system can proactively come forward and in a cooperative mode, not under the cloud of enforcement, work towards achieving compliance.

At this point I think it would be good to discuss the process and options we see from this point forward and I will come back to the 17 systems under consideration today. After today, we are going to recommend one additional opportunity for systems to complete their exemption applications and have the commission consider their request. That will occur in the fall of this year at the next SEC meeting. At that point we will be close to two years into this first exemption period which ends 1/23/09. It is our feeling that if a system has not been able to complete the application process by that point we should pursue alternatives and that would be an Order.

In terms of numbers, what we are talking about is that after today's meeting, assuming approval of the exemptions, we would be bringing approximately 14 more exemptions forward for your consideration. After the fall Sec meeting, the next major milestone we will be focusing on is the 1/23/09 date – its not that far off just a little over 1 ½ years away. At that point we will be making decisions on whether systems qualify for extensions to the exemptions. Systems serving 3300 or less people can qualify for up to three two year extensions which would take them out to 2015 – those extensions must come in front of the Commission for approval. If a system has not made significant progress in this first three-year exemption period we are not going to recommend the extensions and we will pursue compliance through finding of a violation and an enforcement order. The decision to recommend an extension is going to be based on a number of factors all of which we really have not defined at this point but one of, if not the most important factor, will be the arsenic concentration. In prioritizing our workload

and the efforts we put into getting systems into compliance we will focus on the systems with higher arsenic concentrations.

Back to the 17 systems being consider for approval today. First, all the systems demonstrated they had provided some form of notice to their customers of their intent to get an exemption and the date time and location of this hearing – we have not received any comments from the public.

I would like to briefly review the actual exemption document which is pages 3 and 4 under the arsenic rule exemption tag. The entire document is patterned very closely to the federal example that is provided by the USEPA and in many instances the language and conditions you see stated exactly as worded in the federal example – so again we are being consistent with the Safe Drinking Water Act and the application of the exemption process. In our review of the applications we found that the systems meet the three conditions stated in the exemption – there are compelling factors, including economic considerations that make these systems unable to comply, alternative sources of water were not readily available, there were no reasonably available management or restructuring changes that could be made and that the granting of the exemption will not result in an unreasonable risk to health.

In my last presentation to the commission I spent a fair amount of time covering the concept of risk and the setting of standards and I would like to review that briefly with you. The language used in our exemptions is identical to the federal exemption language is unreasonable risk – the concept is not zero risk, its not increased risk but again unreasonable risk – our recommendation was and is based on the following:

- 1) The type of contaminant we are dealing with – arsenic is a chronic rather than an acute contaminant – that means the standard is based on a lifetime of exposure for a certain weight person drinking two liters a day. In contrast, an acute contaminant like e. coli bacteria which we monitor for extensively can cause significant illness or death from one exposure.
- 2) The previous standard of 50 ppb was in place for 64 years and we don't have documented health affects in the US from systems that historically served water in the 10 to 50 ppb range. When EPA sets a standard it is a practical level that can be achieved and does not represent a zero risk level. The science of establishing a standard is not exact and many assumptions go into the process and uncertainty factors are applied to address this issue; the example I used previously was the extrapolation of animal data to humans, another example of this in the establishment of this 10 ppb standard for arsenic for which EPA was scrutinized was the use of exposure data for populations in Taiwan– villages that have elevated arsenic in their water but have very different diets and lifestyles to the US. Uncertainty and assumptions – inherent in the process

- 3) The safe drinking water act provides for this process and actually has other timeframes incorporated into it to allow systems to find reasonable cost effective solutions in reasonable amounts of time – that’s what the exemption process is but additionally the law provides another five years at the front end – the 10 ppb standard was adopted in 2001 but did not become effective until 2006.
- 4) Finally the Nevada State Board of Health where this program previously resided approved the cities of Fallon and Fernley to serve water even above 50 and determined there was not an unreasonable risk but required compliance with the old standard of 50

Moving quickly to the second page of the exemption, we have the compliance schedule requiring the systems to meet certain milestones, these are enforceable schedules and systems can be subject to penalties of up to \$7,500 a day for failure to comply. There are three major milestones: investigating and securing funding, evaluating compliance alternatives and finally implementation of the alternative by 1/23/09.

(Mr. Zimmerman reiterated the three systems that had been removed from the list).

**(END PREPARED REMARKS BY DOUG ZIMMERMAN)**

(Background on exemptions, a list of systems and the draft Exemption Document are contained in **Appendix 1**)

Commissioner Gans asked if the SEC could “anticipate more exemptions coming back,” as most of the systems had less than 3300 customers. Mr. Zimmerman replied that since the September 2006 meeting many of the systems approved there had made great progress and met or were about to meet the standards, but he was equally sure that there would be systems that didn’t, for valid reasons, and would request extensions. He also said that he didn’t anticipate any new applications at this point, only extensions.

Commissioner Rise inquired about the deadlines for funding (November 23 of 2007) and asked if the systems whose applications are to be considered this fall would have the financial investigation and assistance part of the process completed by the time of that consideration. Mr. Zimmerman replied that the November 23 date had been bumped four months (from July 23) because with this hearing in May the time frame would have been such that they would have had to find almost all the systems in noncompliance. He anticipated that for the fall meeting they would do something similar, bumping the November 23 date back by perhaps four months. But he emphasized that the systems should be working on these issues now, whether they have an exemption or not.

Commissioner Rise followed up by asking what the criteria for granting an extension would be. Mr. Zimmerman said they had not defined all the criteria at this point, but thought they would look at systems of similar size (smaller systems face greater financial challenges) and see how proactive they've been and if they've done the work to secure funding. He suspected some systems would do little and they would not get the extension. He said that the level of arsenic would also be a factor, with higher-level system expected to make more efforts. He said that these criteria were still being discussed at both the state and federal levels, anticipating finalizing them by approximately six months before the Jan. 23, 2009 date.

Commissioner Coyner asked about numbers—at the September 2006 meeting it was said there were approximately 80 systems in Nevada that were over the limit, there were 36 systems on that list then and 17 today; does that mean there are 27 more systems out there? Mr. Zimmerman said that the numbers change—the target number is now 68 as some systems have found alternatives (like Reno Tahoe today), and in addition some systems have merged and solved the problem that way. So the number 68 is as firm a number as they've had to work with.

Commissioner Coyner now asked Deputy AG Newton about the language on page 2 of the “draft boilerplate” form in the hearing packet for approving the exemptions. Page 2 says “three additional years to comply by January 23, 2009.” Since we are now in the three-year period, shouldn't the phrase “three additional years” be dropped? Systems might somehow think they literally had three more years from the date the form was signed. After a brief discussion Mr. Zimmerman agreed that the language could just read “seeking to comply by January 23, 2009.”

Commissioner Coyner also inquired about the extension mentioned on page 2 and noted that the fact that there are specifically three, two-year extensions wasn't made specific there. Mr. Zimmerman said he didn't have any problem changing the language to something like “systems of under 3300 may qualify for up to three, two-year extensions,” and that they must be granted by the SEC and are based on progress toward meeting standards. Commissioner Coyner asked how many systems with exemptions were above the 3300 customer threshold, and Mr. Zimmerman replied that nine of the 36 from the September 2006 list and one in the group today. These 10 are probably the only larger systems that will request exemptions. Commissioner Coyner asked what would happen if the larger systems, which cannot get extensions, are not in compliance by January 23, 2009—shut them down, ship in bottled water, what steps would be taken? Mr. Zimmerman replied that they would pursue the administrative order, potentially the systems could be subject to penalties, and a revised compliance schedule with relatively short time-frames would be implemented.

Commissioner Rise followed up by asking if the Bureau had the authority to require alternative supplies if the system was not in compliance by the 2009 date? Mr. Zimmerman answered that the statute does have this provision but only with a finding of “imminent threat to public health,” which would involve moving out of the “long-term risk” that is the basis of this law (that the exemptions are being given under). With respect to arsenic that would be a difficult case to make.

Commissioner Coyner had one last question—at the previous meeting he and Mr. Zimmerman had discussed methodology for measuring the arsenic levels. He noted that before the 2009 deadline the Bureau needed a very strict, or contained, methodology with how the numbers are determined, since this would be important if there were an appeal to the SEC. Mr. Zimmerman agreed that if it became a violation that was cited it would be key to have carefully and clearly established measuring, and that they will have that in place.

Commissioner Gans noted that it might be rare that a new water system came online, but asked if a new system did come on, would it have to meet the standard of 10 ppb? Mr. Zimmerman said yes, it would have to meet the standard.

When there were no further comments from the Commission Chairman Dodgion asked for public comment; there was none, and no further discussion from the Commission.

**Motion:** Commissioner Rackley moved that the exemptions for the 17 listed systems be granted, with the changes identified during the discussion made to the exemption document. Commissioner Coyner seconded, and the vote was unanimous in favor.

Chairman Dodgion moved down the agenda to Item 4, Air Quality Settlement Agreements. Commissioner Shull, who had arrived during the discussion of arsenic exemptions, was noted present for the record.

Larry Kennedy, Acting Supervisor of the Compliance and Enforcement Branch of NDEP’s Bureau of Air Pollution Control presented the settlement agreements.

**(BEGIN PREPARED REMARKS BY LARRY KENNEDY)**

Mr. Chairman, members of the Commission, good morning. For the record, my name is Larry Kennedy. I’m serving as the Acting Supervisor of the Compliance & Enforcement Branch in the NDEP’s Bureau of Air Pollution Control. I have been acting in this capacity since Mike Yamada retired about 14 months ago.

This morning I will present settlement agreements negotiated by the Bureau of Air Pollution Control’s Compliance & Enforcement Branch for approval by the

State Environmental Commission. For the benefit of the new Commissioners, I'd like to briefly describe the roles and responsibilities of the Bureau with respect to the Commission. The BAPC Compliance & Enforcement Branch is charged with ensuring that sources of air pollution comply with the State's air quality rules and regulations, and that those rules & regulations are enforced. The Branch identifies potential violations, directs sources to undertake corrective actions, and when appropriate identifies a penalty. Penalties serve as a deterrent to future violations and promote compliance among the regulated community.

Minor air quality violations are related to the failure of a minor source to conduct required monitoring, recordkeeping, or reporting. Penalties for these Minor air quality violations are specified by the NAC [NAC 445B.281]. For Major violations of state rules and regulations that protect air quality, however, the State Environmental Commission is authorized under the NRS [NRS 445B.640] to levy administrative penalties.

Based on a long-standing agreement, the Compliance & Enforcement Branch negotiates the penalties for major air quality violations on your behalf - on the behalf of the Commission. We understand that the Commission must be assured that the settlements are fair.

We have informed all of the companies or individuals listed on today's agenda that we act as Commission's agent in assessing penalties and negotiating settlements, and that the Commission may see fit to adjust a penalty that we have assessed. All of the companies on the agenda have been notified that their settlements would be considered by the Commission at this meeting.

What I would like to do today is

- briefly summarize each of the settlement agreements, and
- answer any questions you may have.

*(Mr. Kennedy now read a brief description of each settlement including company name, violation circumstances, previous violation history if any and amount of settlement. See **Appendix 2** for the list with comments).*

#### **(END PREPARED REMARKS BY LARRY KENNEDY)**

Commissioner Gans said he had noted that some of the settlements in the packet said "Administrative *Stipulation(s)* and Order" while some said "*Settlement* and Order." Mr. Kennedy said that it was found that it was legally not necessary to have the party stipulate they were at fault in the matter, in fact it could complicate negotiations, so they now used the term "settlement," which is found in the two most recent agreements. Mr. Kennedy responded to a question from Commissioner Mayer that the monies collected from the agreements go to the school district in the county where the violation occurred.

There were no further questions. Chairman Dodgion noted that Silver Peak (Mine) was in Esmeralda County.

Chairman Dodgion asked for public comment; there being none, he said he would entertain a motion.

**Motion:** Commissioner Rackley moved that the settlement agreements listed be accepted by the Commission, Commissioner Mayer seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved to what had originally been item 2, an informational briefing on changes to the Nevada Applicable State Implementation Plan (ASIP). Jennifer Carr, Chief of Air Quality Planning for NDEP, presented the briefing. Following are her prepared remarks:

**(BEGIN PREPARED REMARKS BY JENNIFER CARR)**

Mr. Chairman, Commissioners, my name is Jennifer Carr, Chief of the Bureau of Air Quality Planning for the Division of Environmental Protection.

You will note that this is an informational item, it does not require action by the Commission.

Discussion Level 1:

- In February 2005, NDEP submitted a major proposed update of Nevada's applicable state implementation plan (ASIP) to the U.S. EPA. The ASIP is the State's plan to achieve and maintain the national primary and secondary ambient air quality standards, or NAAQS within each AQ control region in the State. Filing this plan is a federal requirement and should represent the portion of the Nevada program that is federally-enforceable. [The criteria pollutants are O<sub>3</sub>, CO, NO<sub>2</sub>, SO<sub>x</sub>, PM and Pb.]
- The items in your binder represent 12 regulations and statutes that are still in the NDEP's current air program, but are not appropriate to be included in the federally-filed SIP. One example is the rescission of Nevada's Odor program regulations from the federal document, because it is a state-only program that is not federally enforceable.
- The US EPA has agreed to all 12 rescissions included in your binder, however, the required evidence of public participation was not available for submittal. This hearing serves the purpose of providing the public with 30-days notice and a hearing venue.
- For years, the NDEP has brought State Implementation Plan items through the SEC because the US EPA has operated under the belief that even non-regulatory "approvals" were to be done by this body. However, in practice, we have typically brought them to you as non-action, informational items.
- The agenda for this meeting was prepared with that background in mind.

- As recently as this past Friday, we finally received recognition from a US EPA Region 9 attorney that NRS 445B.205 designates the Department with the authority to be the acting agency for the purposes of the Clean Air Act. Likewise, future hearings on SIP document submittals will be handled by the NDEP. Of course, any regulatory amendments will come through the SEC for adoption as required.

RECOMMENDED ACTION: Basically, we are required to be able to show that the public has been informed of our proposal to remove these provisions as we update the federal ASIP document, and this hearing serves that purpose. I'll be glad to take any comments or answer questions. Thank you.

**(END PREPARED REMARKS BY JENNIFER CARR)**

Chairman Dodgion said that, to clarify—these provisions were being removed from the ASIP document, but of course not from the Administrative Code or Nevada Statutes. Ms. Carr said that was correct.

Chairman Dodgion asked for public comment, and when there was no response noted that this ought to satisfy the requirement that the public be given the opportunity to comment on the deletions from ASIP.

He now moved to Item 5, an informational item on the Bureau of Air Pollution Control Penalty Table. Larry Kennedy again presented for the BAPC:

**(BEGIN LARRY KENNEDY'S PREPARED REMARKS)**

**NDEP Bureau of Air Pollution Control**

Description of the Administrative Penalty Table

Assessing penalties for air quality violations not related to emission exceedances

Summary

The NDEP-Bureau of Air Pollution Control, Compliance & Enforcement Branch is advising the Commission that the Bureau has begun using an Administrative Penalty Table to determine penalties for major air quality violations that are not related to emission exceedances. We developed the Table as a supplement to the Penalty Matrix, a worksheet that was originally developed to assess penalties related to emissions exceedances.

Background

As I mentioned earlier today when discussing the settlements negotiated by the Compliance & Enforcement Branch, the Commission is authorized under the

NRS [NRS 445B.640] to levy administrative penalties for major violations of state rules and regulations that protect air quality. [Penalties for minor air quality violations, which relate to the failure of a minor [Class II or Class III] source to conduct required monitoring, or recordkeeping, or reporting, are specified by the NAC.]

For some time, the Compliance & Enforcement Branch has used a “Penalty Matrix” to determine the penalty for all types of major air quality violations. The Penalty Matrix is based on a worksheet developed by the U.S. E.P.A. mainly to address emissions exceedances. In recent years, members of the Commission have voiced concerns regarding apparent inconsistencies in the Compliance & Enforcement Branch’s assessment of penalties. The penalties assessed for non-emissions violations, for example for operating without a permit, have shown the greatest variability. The NDEP-BAPC believes that much of this variability stems from the difficulty of using the Penalty Matrix to determine penalties for these types of violations.

For background, let me describe the Penalty Matrix. It relies on two major factors to determine the total penalty:

- the “gravity” component, and
- the occurrence of a history of non-compliance or mitigating factors.

The base penalty amount depends mainly on the gravity component, which links the severity of an emissions exceedance to its “potential for harm” and its duration. The potential for harm depends on the volume of pollutant released during a particular emission exceedance, its toxicity, and the risk it presents to public health or the environment.

The Penalty Matrix relies heavily on a time element. Under the Penalty Matrix, penalties for major air quality violations are calculated on the basis of \$600 per unit or system, per day. Or per hour, if it is an hourly emission limit that has been violated. Repeat violations involving multiple emission units can therefore result in very large penalties.

In response to the concerns voiced by the Commission, the NDEP-BAPC has developed an Administrative Penalty Table that identifies penalties for non-emissions violations. The Table establishes fixed penalties for specific types of non-emissions violations, and addresses some of the difficulties encountered in using the Penalty Matrix to assess penalties for these violations.

#### The Administrative Penalty Table

I would like to refer the Commission to the copy of the Administrative Penalty Table included in your information package. The left column of the Table identifies the class of permit, which is based on a facility’s potential annual

pollutant emissions. In general, “Class 1” sources – which are also known as Major sources - have the potential to emit over 100 tons/yr of an individual pollutant. Class 2 and Class 3 sources are referred to as Minor sources. Class 3 sources have the potential to emit less than 5 tons /yr, and Class 2 sources fall in between the Class 1 and Class 3 sources.

As you can see by the headings on the top of the Table, it establishes fixed penalties for several types of violations:

- Constructing or Operating without a Permit
- Failure to Maintain Process or Air Pollution Control Equipment resulting in Uncontrolled Emissions
- Failure to Comply with a Permitted Operating Parameter
- Failure to conduct required Reporting, Monitoring, or Recordkeeping; and
- Violations related to Source Testing.

Penalties for **Constructing or Operating without a Permit** vary from a minimum of \$500 for Surface Area Disturbance or “SAD” permits to \$10,000 per system or unit for major (Class I) industrial sources. The penalties represent a one-time penalty of one–to two– times the cost of applying for an air quality permit or permit modification. In the past, consideration of the time during which a source had operated without a permit resulted in a wide range of penalties for this type of offense. The penalty for SAD permits is linked to acreage: for example, an unpermitted development totaling 100 acres would incur a penalty of \$5,500.

Penalties for **Failure to Maintain Process or Air Pollution Control Equipment** that results in uncontrolled emissions are set at a minimum of \$600 per event. Examples include equipment with holes or breaches that fails to capture all the process material or fugitive emissions, or failure to maintain equipment such as water sprays or a water truck. In cases such as these, the Penalty Matrix will be used to assess the severity of the release.

Penalties for **Failure to Comply with a Permitted Operating Parameter** are set at a minimum of \$600 per event. Pollutant emission rates are commonly based on maximum process throughput rates, fuel combustion rates, or other operational criteria. Hence, operating parameters serve as surrogates for hourly emissions limits.

Penalties for **Failure to conduct required Monitoring, Recordkeeping, or Reporting** are highest for the Major sources, which have strict federal reporting requirements. Failures to submit annual certifications or semi-annual reports carry the highest penalties. For Minor sources, the NAC [NAC 445B.281] specifies that the first three violations of each type - Monitoring, Recordkeeping,

or Reporting - are Minor violations, and identifies the applicable penalties. The fourth violation of each type represents a Major violation.

Source tests are conducted only once every one to five years, but represent an important demonstration that a source can and does operate in compliance with its permitted emissions limits. **Violations related to Source Testing** include (i) failure to provide adequate notification, (ii) exceedance of a permitted emissions limit during source testing, and (iii) a late test or failure to test. Initial Opacity Compliance Demonstrations or “IOCDs” represent a particular kind of source test that uses visible observations to determine a source’s compliance with opacity limits.

The **Notification** requirement is in place to ensure that the NDEP-BAPC has enough time (30 days) to plan to observe a test and to review test protocols.

The penalty for a **failed source test** is set at \$500 to \$1,500 per pollutant, depending on permit class. The penalty for **failure to conduct a source test** is assessed on a monthly, per-system basis up to a maximum penalty of \$5,000 (\$2,000 for initial opacity compliance demonstrations, or IOCDs). The higher penalty for failing to test should prevent sources from being penalized for conducting required source tests – the Penalty Table should not provide a disincentive to conduct testing.

In the past, the BAPC Compliance & Enforcement Branch used the Penalty Matrix to determine the penalty for violations related to source testing. Because sources operate for tens to hundreds of days between source tests, however, and because many systems consist of multiple emission units, use of the Penalty Matrix often resulted in calculated penalties of over \$100,000. The NDEP-BAPC recognized that such penalties are excessive, and the actual penalties ratified by the Commission were considerably less. The NDEP-BAPC believes that capping the penalty for late source tests and establishing fixed penalties for other source testing violations provides for more consistent and reasonable penalty determinations.

### Conclusions

In conclusion, the NDEP-BAPC believes that the Administrative Penalty Table provides a useful tool for assessing penalties for major air quality violations that are not related to emission exceedances. **(See Appendix 3 for Penalty Table)**

### **(END LARRY KENNEDY’S PREPARED REMARKS)**

Commissioner Gans commented he had read the minutes of the previous SEC meeting and there was a discussion of the possibility of “mini-meetings” or panels to consider air quality violation agreement ratifications—he noted it was not on the agenda and wondered if there had been any discussion of that issue.

Deputy AG Newton said that the determination had been made that the statute only allowed for the panels in contested cases (appeals) and not in the approval of the settlement agreements. Chairman Dodgion said that agreed with his interpretation.

Coleen Cripps, Deputy Administrator of NDEP now came forward at the request of the Chairman to do a briefing for the Commission from the NDEP. She stated that there were two things that Administrator Drozdoff had asked her to talk about, the first being a legislative update of the bills that were still in progress of interest to the Commission and NDEP. Following are her prepared remarks on legislation:

**(BEGIN COLLEEN CRIPPS'S PREPARED REMARKS)**

All of these bills are still in process.

Three Bills that affect the Commission directly (although a number of these bills if they become law would require revisions to the regulations).

AB217 – Revises the membership of the SEC to require the Governor to appoint one member who has experience and expertise in advocating issues related to conservation. There are a couple of options. The governor could wait until the end of the next time the term is up for one of the public members to make the appointment, or he could decide that one of the existing appointments meets the criteria. The language does provide a lot of discretion and doesn't seem to rule anyone out. *(During the prepared remarks on this bill Chairman Dodgion asked whether the bill would require a 12<sup>th</sup> member of the SEC be appointed (answer: it would not) and SEC Executive Secretary John Walker also provided some historical background on the bill in previous Legislatures).*

AB94 – Standing Bill. Basically eliminates the language that was added during the last session. We proposed a compromise position that would require participation during the public process in order for someone to have standing, but it was not broadly supported. *(Chairman Dodgion noted that a memo had been received from John Walker that if this bill became law the Commission would probably have to revisit the Beverly Hills Dairy appeal, which had been denied based on standing issues. Counsel Newton noted that at a hearing on this bill Administrator Drozdoff had said that NDEP would not be opposed to rehearing or moving forward with the appeal should the bill pass. Litigation on the appeal awaits a decision by the judge on whether he wants to continue to move forward on the litigation or await the end of the legislative session and see what changes come from it. Mr. Newton assumed that the judge would want to wait. There was further discussion by counsel about the appeal of the Big Springs permit by Great Basin Mine Watch; that appeal is definitively over because the appellant missed a filing deadline, so this bill will have no effect).*

SB452 – DMV Bill that requires the State Environmental Commission to adopt regulations related to vehicle inspection stations. Regulations related to this aspect of the IM program had been adopted directly by the DMV. Now they will be seeking the approval of the Commission before new regulations can be adopted. Leo discussed this proposal with Commission at the last hearing. *(Chairman Dodgion clarified that this would place adoption of these regs with the SEC—the regs to be proposed by DMV).*

#### Three Mercury Related Bills:

AB67 – The Division's (NDEP) Bill: Gives the Division the authority to generate revenue from the sale of emissions allocations or credits and changes the administrative fine limit from \$500 to \$2000. Regulations related to this bill were adopted last year by the Commission.

AB115 – Mercury Bill that requires the state MSHA to revise and update their mercury regulations related to worker health and safety and provides the Division with two new inspectors for the Nevada Mercury Control Program. *(In response to a question Ms. Cripps clarified that inspectors to be paid for by fee increases on the mining industry).*

SB118 – Handling and storage of Hg. Consistent with the CAPP regulations adopted by the Commission last year. *(Mr. Walker noted that the temporary CAPP regulation approved by the SEC in September 2006 will expire November 1 and will therefore be on the agenda at the SEC meeting in the fall).*

#### Inspection and Maintenance-related Bills:

AB321 – Custom vehicles removes replica vehicles manufactured after 1968 that are designed to look like vehicles from before 1968 from the IM program, and limits the number of replicas that can be registered as such to 100 per year. Maintained solely for occasional transport and not used for daily transportation.

SB161 – Provides a 5 year exemption from I/M for hybrid vehicles. *(Chairman Dodgion stated that thought hybrid vehicles shouldn't need an exemption—isn't that the point? Ms. Cripps said that there were many other efforts to encourage hybrid vehicles, but apparently they need this exemption or would be treated like any other for I/M purposes).*

#### One GHG Bill:

SB422 – Requires the Division to prepare a comprehensive EI on GHG emissions in Nevada and to develop regulations that would establish a GHG registry and require electric generating units with a design capacity of greater than 5 megawatts and generate electricity for sale to participate in the registry

and report at least annually. Should this bill pass, new regulations will be required, probably presented at the SEC fall meeting.

One Waste Related Bill:

AB113 – Landfill liner Bill that would require synthetic liners for any landfill that receives more than 500 tpd.

One Water Bill:

SB267 – Provides additional direction on the kind of projects that the Board for Financing Water Projects can fund. (We were neutral on this bill)

Two Interim Studies

ACR 24 – Creates an interim study on GHGs (original bill included mercury, silica and other environmental pollutants).

SCR30 – Creates an interim study on fuel and uses of fuel and other sources of energy in Nevada.

The second thing that Administrator Drozdoff wanted the SEC to be aware of today is the settlement with Nevada Power over air quality violations. This was a joint settlement with the U.S. EPA and Justice Dept. (refer to attached press release in **Appendix 4** for details).

**(END COLLEEN CRIPPS’S PREPARED REMARKS)**

Commissioner Coyner had a question about the “mini-panels” referred to earlier; he said he appreciated Mr. Newton’s opinion, but noted that there had been 7-8 months between hearings and wondered if this created a problem for Mr. Kennedy and Air Pollution Control with regard to settlement agreements. Ms. Cripps said yes, it did. So Commissioner Coyner asked Mr. Newton for confirmation that mini-panels to approve air quality settlements were “dead” and Mr. Newton agreed, adding that it was by statute. They are only available for appeals. Commissioner Coyner concluded that then eight months between meetings was too long—Executive Secretary Walker agreed, and said that the response was the kind of meeting being held today by videoconference which is much less expensive and time consuming. He added that the Commission might consider more of these in between the big regulatory meetings, where they are just a couple of hours and hear air settlements, other items and informational briefings.

Chairman Dodgion noted that some past meeting have had an overloaded agenda where there wasn’t enough time for desired public input. Commissioner Coyner asked if 2007 was planned to be a “two-meeting year?” Mr. Walker responded that in the year of the permanent regulatory cycle which begins next July 1 there would be more regulations from the Bureaus and a corresponding

increase in the work load so that he anticipated three or four meetings in the year beginning July 1.

Commissioner Coyner had one more question for Ms. Cripps—at the previous meeting in September 2006 the Administrator had committed to provide to the Commission the list of mercury sources that the State Fire Marshal maintains; that is entities that store less than the 100 tons in the CAPP regulations. He requested that NDEP email the Commission with the list and Ms. Cripps—he said he would be especially interested in the amounts listed for mines. Ms. Cripps agreed.

Mr. Walker told the Chairman that he expected the next meeting to possibly be in October, a full regulatory meeting. He said he would work closely with the Chairman on scheduling.

Chairman Dodgion now moved to Agenda Item 6, Public Comment. There being none, he declared the meeting adjourned.

## **APPENDICES INDEX**

### Appendix 1—Agenda Item 3

Public Water Systems Recommended for Arsenic Exemptions—background documents, systems list, draft exemption document.

### Appendix 2—Agenda Item 4

Air Quality Settlement Notes

### Appendix 3—Agenda Item 5

Administrative Penalty Table

### Appendix 4—Administrator’s Briefing

Press Release, April 3, 2007, Settlement With Nevada Power

## Arsenic Exemptions Before the State Environmental Commission (SEC)

Water systems in Nevada with arsenic concentrations greater than 10 parts per billion (ppb) but below 50 ppb may apply for an exemption from the State Environmental Commission (SEC). The Nevada Division of Environmental Protection (NDEP) has received exemption applications from 68 water systems and is recommending the SEC approve 20 of those requests (see list below). 36 systems' requests were approved at the September 2006 SEC meeting. The remaining 12 applications were not complete and cannot be recommended for approval at this time.

**Background:** An exemption is an administrative tool allowed under the federal Safe Drinking Water Act (and Nevada law). Exemptions can be used to grant water systems additional time to acquire financial and technical assistance to meet new or revised federal drinking water standards, such as the newly adopted arsenic standard.

Of note, the revised arsenic standard of 10 ppb became effective on January 23, 2006. The old standard of 50 ppb had been in place for more than 60 years. If the list of 20 exemptions are approved by the SEC, then the respective water systems listed below would be granted an additional three years (until January 23, 2009) to comply with the new arsenic standard.

It's worth mentioning that water systems serving less than 3,300 persons may also be eligible for up to 3 exemption extensions of 2 years each, allowing up to 9 years (January 23, 2015) to comply with the new arsenic standard.

A "boiler plate" Arsenic Exemption document for the requested 20 water system exemptions is presented below. The exemption document contains standard language that addresses compliance schedule and reporting requirements.

**Public Notification Requirements:** By statute, each water system seeking an exemption was required to notify their customers of their intent to obtain an exemption along with the date, time, and location of the SEC hearing. Upon receiving an exemption, statutory requirements mandate that a water system notify their customers that they have been granted an exemption. NRS 445A.950 further provides for civil penalties and administrative fines if a water system fails to comply with the conditions of an exemption approved by the Commission.

**List of Water Systems applying for the Arsenic Rule Exemptions:** Pursuant to the federal Safe Drinking Water Act and Nevada Revised Statute (NRS) 445A.935, the State Environmental Commission may grant exemptions from the regulations of the Commission. The following public water systems have submitted arsenic exemption applications. These applications have been reviewed and are being recommended for approval by the Nevada Division of Environmental Protection.

<u>WATER SYSTEM ID #</u>	<u>SYSTEM_NAME</u>
NV0000903	CMC Steel Fabricators DBA CMC Joist
NV0000303	Old River Water Company
NV0000061	Tolas Park MPH
NV0000147	Frontier Village MHP
NV0000327	Gaye Haven Care Home
NV0000146	Hitching Post Motel and RV Park
NV0000349	Hollister Hecla Water System
NV0000043	Crescent Valley Water System
NV0002573	Devil's Gate GID #2
NV0000907	Lone Tree Mine
NV0000008	Lander Co Sewer and Water Dist 1 BM
NV0000006	Lander Co Sewer and Water Dist 2 Austin
NV0000005	Alamo Sewer and Water GID
NV0000185	Panaca Farmstead Water Association
NV0002516	Five Star MHP
NV0000242	Weed Heights Development
NV0000357	Hawthorne Army Ammo Depot
NV0000913	Tahoe Reno Industrial Center
NV0000206	Pioneer Hills MHP
NV0004021	Silver Knolls Mutual Water Company

**ARSENIC EXEMPTION DOCUMENT**  
**NEVADA STATE ENVIRONMENTAL COMMISSION**  
(Draft Boiler Plate)

**IN THE MATTER OF THE REQUEST  
OF THE**

**COUNTY, FOR AN EXEMPTION FROM  
REGULATIONS GOVERNING PUBLIC  
WATER SYSTEMS, ARSENIC**

**FINDINGS OF FACT**

The above entitled matter came before the Nevada State Environmental Commission, hereafter known as the Commission, at a duly noticed public hearing on May 24, 2007.

The Commission, having heard the presentation from staff of the Nevada Division of Environmental Protection (NDEP) recommending approval of the request and having extended an opportunity to the public to be heard, finds as follows:

The \_\_\_\_\_ public water system, hereafter known as the System, was in operation prior to January 23, 2006, the effective date of the revised arsenic standard of 10 parts per billion (ppb). The System has a source or sources of drinking water that exceed the revised standard but is below the previous standard of 50 ppb. The federal Safe Drinking Water Act and the regulations of the Commission provide for the granting of exemptions if the following conditions exist:

1. Because of compelling factors, including economic considerations, the public water system is unable to comply or to implement measures to develop an alternative source of supply;
2. The granting of the exemption will not result in an unreasonable risk to health; and
3. Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with the primary drinking water standards or, if compliance cannot be achieved, improve the quality of the drinking water.

Review of the exemption request by NDEP staff has found the system meets the above stated conditions. Furthermore, NDEP staff has found that the System has established that it needs financial resources to comply with the maximum contaminant level and has either entered into a financial assistance agreement to make capital improvements or has shown that financial assistance or resources are reasonably likely to be available within the period of time that the exemption will be in effect.

In consideration of the above, the System is seeking an exemption to allow three additional years to comply, by January 23, 2009.

### CONCLUSIONS

This matter is properly before the Commission pursuant to Nevada Administrative Code (NAC) 445A.489, and the determination of this matter is properly within the subject matter jurisdiction of the Commission. The Commission specifically finds that the System was in operation prior to January 23, 2006, is unable to comply with the regulation due to compelling factors and no unreasonable risk to public health will result if the exemption is granted. The Commission, having considered the relative interests of first, the public and second, the System, being fully advised and by vote, does grant the exemption until January 23, 2009.

### DECISION

It is the decision of the Commission to grant the requested exemption, effective through January 23, 2009, subject to the following schedule of compliance:

1. The System shall investigate and secure, to the extent that funds are available, all sources of financial assistance by November 23, 2007;
2. The System shall complete an evaluation of compliance alternatives, including retaining the services of an engineer and conducting pilot testing as needed and select a final compliance option by June 23, 2008;
3. The System shall install, test and have in full operation a treatment system or other compliance option capable of producing drinking water that meets the arsenic standard of 10 ppb by January 23, 2009; and
4. The System shall provide semi-annual progress reports to NDEP by January 1<sup>st</sup> and July 1<sup>st</sup> of each year of the exemption period.

Systems serving a population less than 3,300 may qualify for an extension to this exemption if the system demonstrates significant progress during this three year period.

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

\_\_\_\_\_  
Lew Dodgion, Chairman  
Nevada State Environmental Commission

NDEP-BAPC SETTLEMENT AGREEMENTS – May 24, 2007

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
1	3D Concrete, Battle Mountain, Lander County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct required initial opacity compliance demonstrations (IOCDs). IOCDs were required for 3 systems.	2080	\$2,000
2	A&K Earthmovers, Inc., Fallon airport, Churchill County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to operate the air pollution controls (water sprays) required by the operating permit during operation of the hot mix plant. The violations represent the company’s second and third violations within the last 60 months, which increases the assessed penalty by ten percent.	2085, 2086	\$3,300
3	A&K Earthmovers, Inc., Desert Mtn plant, Fallon, Churchill County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to operate in accordance with the requirements of its dust control plan, which is directed at controlling fugitive emissions generated by earthmoving equipment. The violations represent the company’s fourth violation within the last 60 months, which increases the assessed penalty by ten percent.	2090	\$1,100
4	American Assay Lab Inc., Elko County	NAC445B.275 “Violations: Acts Constituting; notice.” For operating without a permit: the company failed to apply for and receive a renewal of its (expired) air quality operating permit.	2091	\$600
5	A.S.C. Excavating & Grading, Pahump, Nye County	NAC445B.275 “Violations: Acts Constituting; notice.” For operating without a permit: the company failed to apply for and receive a permit for a surface area disturbance before operating and constructing equipment in its 15-acre gravel pit.	2082	\$1,000

(Continued on following page)

NDEP-BAPC SETTLEMENT AGREEMENTS – May 24, 2007

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
6	Atlas Contractors, Inc.	NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the hot mix asphalt plant’s permitted limit for emissions of particulate matter during a source compliance test.	2110	\$1,500
7	Chemetalle Foote Corporation, Silver Peak, Mineral(?) County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to comply with the facility’s permitted annual limits for emissions of particulate matter (PM) and PM10 in 2005. The violations represent the company’s second violation within the last 60 month; this fact, coupled with the cooperation demonstrated by the company, resulted in a five percent increase in the assessed penalty.	2013, 2014	\$2,100
8	CNC Dirt Movers, Esmeralda County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to apply for an receive an operating permit prior to constructing and operating an aggregate processing plant for a housing development for a period of five months. (The penalty is equivalent to that assessed the development’s owners for failing to apply for and receive a surface area disturbance permit before starting work on the 350-acre development.)	2054	\$5,100
9	Diamond Hot Springs Estate, Lyon County	NAC445B.275 “Violations: Acts Constituting; notice.” For conducting earthwork/surface disturbance operations on five acres or more without first obtaining an Air Quality Operating Permit for Surface Area Disturbance.	2037	\$1,800
10	John Davis Trucking, Inc., Battle Mountain, Lander County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct required IOCDs. The IOCDs were required for 3 systems.	2079	\$2,000

(Continued on following page)

NDEP-BAPC SETTLEMENT AGREEMENTS – May 24, 2007

TAB NO.	COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
11	Moltan Company, Churchill County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct permit renewal source compliance testing at least 60 days prior to expiration of its permit, and for exceeding the permitted emissions limit for particulate matter during the source test.	2062, 2063	\$2,100
12	Nobel Perlite, Fallon, Churchill County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct initial compliance testing on certain systems within 180 days of permit issuance, for failure to conduct permit renewal source testing within 60 days of permit expiration, for failure to control fugitive emissions on October 24, 2005, and for failure to notify the NDEP-BAPC of the excess emissions. In consideration of improvements undertaken by the company since acquiring the facility in September 2004, the assessed penalty of \$8,250 was reduced by \$1,500.	2025, 2026, 2027	\$6,750
13	Pahrump Valley Gravel, Pahrump, Nye County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to for failure to perform IOCDs on plant equipment and for failure to use best practical methods to control fugitive emissions at its aggregate processing facility. These violations represent the owner’s third and fourth violations within the last 60 months, including the owner’s second violation for failure to control fugitive emissions. The assessed penalty was increased by \$700 to reflect the previous violations.	2073, 2076	\$3,900
14	Ruby Dome, Inc., Lander County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to operate the air pollution controls (water sprays) required for five systems by the operating permit during operation of the aggregate plant.	2066	\$3,000

**Administrative Penalty Table - Non-Emissions Air Quality Violations**  
(Penalty Matrix used to augment fines in the event of repeat violations)

Permit Class	Constructing or Operating without a Permit (per system or unit)	Failure to Maintain Process or Air Pollution Control Equipment that results in Uncontrolled Emissions (minimum; penalty matrix used to assess severity)	Failure to Comply with a Permitted Operating Parameter (per event)	Failure to conduct required Monitoring, Recordkeeping, or Reporting - includes incomplete or inadequate source test reports (per reporting period or per unit-day)	Violations related to Source Tests			
					Failure to provide adequate (30-day) Notification	Failed test - exceedance of permitted emissions limit (minimum; penalty matrix used to assess gravity component)	Late Test, or Failure to Test	Failure to Conduct IOCDs
1	\$10,000 per unit	\$600	\$600	Annual Compliance Cert: <b>\$2,000</b> Semi-Annual Monitoring Rept: <b>\$1,000</b> Other: <b>\$600</b>	\$1,000	\$1,500 per pollutant	\$500 per system per month, up to a maximum of \$5,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system
2	\$3,000	\$600	\$600	\$600 [for major violations, as identified by NAC 445B.281.4]	\$1,000	\$1,500 per pollutant	\$500 per system per month, up to a maximum of \$5,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system
2 - General	\$1,000	\$600	\$600	\$600 [for major violations, as identified by NAC 445B.281.4]	\$500	\$1,500 per pollutant	\$500 per system per month, up to a maximum of \$5,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system
3	\$600	\$600	\$600	\$600 [for major violations, as identified by NAC 445B.281.4]	\$500	\$500 per pollutant	\$500 per system per month, up to a maximum of \$5,000 per system	\$200 per system per month, up to a maximum of \$2,000 per system
SAD	\$500 plus \$50 per acre of planned disturbance	\$600	\$600	\$600 [for major violations, as identified by NAC 445B.281.4]	n/a	n/a	n/a	n/a



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## ***Environmental News***

**For Immediate Release: April 3, 2007**

**NDEP Contact: Dante Pistone 775-687-9395**

**EPA Contact: Lisa Fasano 415-947-4307**

**USDOJ Contact: Andrew Ames 202-514-2007**

### **Nevada DEP, US EPA and US DOJ reach \$90 million joint settlement with Nevada Power**

**CARSON CITY** - Nevada Power Co. has agreed to a joint settlement today with the federal government and the State of Nevada that will require the utility to spend nearly \$85 million on cleaner technology and pay a \$1.11 million fine, the Nevada Division of Environmental Protection, U.S. Department of Justice, and U.S. Environmental Protection Agency announced. The settlement resolves allegations of air pollution control violations at its Reid Gardner coal-fired electric generating plant located 50 miles northeast of Las Vegas.

As part of the settlement, Nevada Power will also fund more than \$4 million in energy conservation projects for the Clark County School District over the next seven years, saving the district at least \$500,000 per year in energy costs.

“I am pleased that this case has been amicably resolved,” said Governor Jim Gibbons. “I applaud NDEP for its determination in carrying out this enforcement action and its dedicated efforts to protect the state’s air quality. Nevada Power, to its credit, has accepted the penalty, and embraced additional proactive measures that will result in energy cost savings for the school district and other air quality improvements in southern Nevada.”

“The State of Nevada in cooperation with the federal government has worked to ensure that environmental laws are being followed,” said Matthew J. McKeown, acting assistant attorney general for the Justice Department’s Environment and Natural Resource’s Division. “We continue to be committed to working with the EPA and states in order to ensure that industry and companies are in compliance with laws that protect the environment.”

In July 2005, after a year-long investigation, NDEP’s Bureau of Air Pollution Control issued 56 violation notices to Nevada Power for alleged air pollution control violations at its Reid Gardner electric generating plant in Clark County.

Most of the alleged violations involved failure to comply with emissions limitations and failure to adequately monitor and record operational data necessary for NDEP to ensure that the company was complying with the state's air quality requirements.

"This case clearly demonstrates our strong commitment to the protection of Nevada's environment," said NDEP Administrator Leo Drozdoff. "In addition to reducing air pollution in southern Nevada and assisting the school district with energy conservation, this settlement has led to a much-improved working relationship between NDEP and Nevada Power's management and staff."

NDEP and Nevada Power requested EPA's participation in this case in September 2005 to assist with negotiations and to resolve federal Clean Air Act violations of Reid Gardner's Title V emissions permit and federal opacity, or smoke regulations.

"NDEP's strong lead on this case helped propel us to today's settlement," said Wayne Nastri, regional administrator for the U.S. EPA's Pacific Southwest region. "We were able to strike an effective state/federal partnership building on NDEP's extensive investigation and the federal government's experience negotiating large power plant cases."

As part of the settlement, Nevada Power agreed to spend nearly \$85 million on these additional measures to prevent future emissions violations:

- Replacement of the fuel oil igniters with cleaner-burning natural gas igniters used in start-up and flame stabilization in the plant's boilers;
- Installation and operation of a baghouse system to reduce particulate emissions at Units 1, 2 and 3 of the plant by more than 300 tons per year;
- Development and implementation of an Environmental Management System to ensure compliance with the stringent emissions monitoring, recordkeeping and reporting requirements contained in its operating permit. The plant's operations must also be audited by a third-party auditor, and the findings reported to NDEP and EPA.

Additionally, Nevada Power will install a new advanced combustion system in the boiler of Unit 4 at Reid Gardner, which will reduce nitrogen oxide emissions by as much as 1000 tons per year. This system, which is expected to cost up to \$9.7 million, will be installed and operational within two years. Through this settlement, Nevada Power has agreed to permanently retire the greater of 30 percent or 282 tons of NOx emissions from the Clark County air pollution inventory.

The State of Nevada will receive 70 percent, or \$770,000, of the \$1.11 million civil penalty which reflects the state's level of effort in this case. The federal government will receive 30 percent, or \$340,000.

Clark County School District officials expressed support for the settlement.

“We look forward to continuing and expanding the well-proven partnership we have with Nevada Power in terms of identifying and implementing energy efficiency measures,” said Paul Gerner, associate superintendent of facilities. “It is fortunate that these funds, which arise from a negative circumstance, can be put to such a generally beneficial use. We’ll use these funds to make changes that permanently reduce our power consumption, ensuring more dollars are available to support education.”

Docket #: 2:07-CV-00417

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