

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of September 24, 2008

Video Conference
Nevada Department of Conservation & Natural Resources
Bryan Building, Carson City Nevada

Nevada Division of Environmental Protection
- Las Vegas Office, 2030 E. Flamingo Rd.

Members Present:

Lewis Dodgion, Chairman
Pete Anderson
(Eugene) Jim Gans
Stephanne Zimmerman
Tracy Taylor
Ira Rackley
Kenneth Mayer

Members Absent:

Alan Coyner, Vice Chairman
Tony Lesperance
Frances Barron
Harry Shull

SEC Staff Present:

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

BEGIN SUMMARY MINUTES

Chairman Dodgion called the meeting to order at 10:00 am and noted that the meeting had been properly noticed and that a quorum was present. He then asked Mr. Walker if there were any changes to the agenda. Mr. Walker stated that agenda item 4, (Regulation R181-08: Ground Water) had been withdrawn. He said there were some outstanding "stakeholder" issues that needed to be resolved by the Division of Environmental Protection (NDEP) and that the regulation would be considered at the forthcoming November or February SEC regulatory hearings.

Mr. Walker further stated that agenda item 5 (Regulation 191-08: Reporting Requirements for Excess Air Emissions & Clarification of Procedures) had also been withdrawn. He noted that NDEP had failed to conduct the required regulatory workshop for the regulation, which is a mandatory requirement under Nevada's Administrative Procedures Act. He said the regulation would be considered at the November 12th SEC regulatory hearing.

Chairman Dodgion acknowledged the changes to the agenda. He then moved to Agenda Item 1.

1) Approval of minutes from the June 17, 2008 SEC hearing

Chairman Dodgion asked if there were any changes to the draft minutes; hearing none he ask for a motion to approve the minutes.

Motion: Commissioner Gans moved that the minutes of June 17, 2008 be approved, the motion was seconded by Commissioner Rackley, and the vote was unanimous in favor.

The Chairman now moved down the agenda to:

2) Approval of Settlement Agreements - Air Quality Violations

(Begin prepared remarks of Mr. Larry Kennedy)

Mr. Chairman, members of the Commission, good morning. For the record, my name is Larry Kennedy. I Supervise the Compliance & Enforcement Branch in the NDEP's Bureau of Air Pollution Control.

This morning I will present three Settlement Agreements regarding major air quality violations for approval by the State Environmental Commission. The Commission is authorized under the Nevada Revised Statutes to levy administrative penalties for Major violations of state rules and regulations that protect air quality. Based on a long-standing agreement, the Compliance & Enforcement Branch assesses penalties for these violations on the behalf of the Commission.

We have informed all of the companies or individuals listed on today's agenda that the Branch acts as the Commission's agent in Settlement discussions, and that the Commission may see fit to adjust the assessed penalty. All of the companies on the agenda were notified that their Settlements would be considered by the Commission at this meeting.

What I propose to do today is:

- describe the alleged violations and each of the related Settlement agreements, and then
- answer any questions you may have.

Please refer to the Table listing the proposed Settlements. (Attachment 1)

The first Settlement: Baker Hughes operates a barite processing plant in Lander County. In June 2007, the NDEP-BAPC issued an Order requiring Baker Hughes to conduct emissions compliance tests of two processing systems before September 2007. Unfortunately the tests were not conducted until February

2008, some five months after the specified deadline. Based on the Administrative Penalty Table, which calls for a penalty of \$500 per system per month for failing to conduct emission tests, the penalty is assessed at \$1000 per month for a total of \$5,000.

(Break in prepared remarks of Mr. Kennedy)

Chairman Dodgion asked if there were any questions from the Committee on this Settlement Agreement.

Commissioner Anderson asked if the permit is now valid and they are operating again to which Mr. Kennedy replied "Yes". Commissioner Anderson then asked when that occurred; Mr. Kennedy answered that it occurred at that time (in February 2008).

Chairman Dodgion asked if there was a representative from Baker Hughes in the audience and asked if that person had any questions and if he was in agreement with the Settlement. A representative from Baker Hughes was in the audience and he noted he was in agreement with the settlement agreement and otherwise had no comment. Chairman Dodgion asked the Committee if there were any more questions and expressed a preference to hear each Settlement Agreement one at a time.

Motion: Commissioner Rackley moved to approve NOAV 2147. The motion was seconded by Commissioner Taylor and the vote was unanimous.

Chairman Dodgion asked Mr. Kennedy to continue.

(Continue prepared remarks of Mr. Kennedy)

Now, if you would please refer to Settlement No. 2: Service Rock Products Corporation operates a concrete batch plant in Nye County.

The proposed Settlement refers to a recurring violation for operating without a permit and requires some background information. During the Commission hearing on June 17, 2008, the Commission ratified an \$8,800 Agreement with Service Rock Products to settle violations related to its facility located in Lincoln County. The violations were issued in March 2007 for operating an aggregate processing plant without a permit, and in August 2007 for failing to apply for and obtain a permit revision prior to constructing a concrete batch plant at the same location. During the June 17 hearing, one of the Commissioners questioned whether we were getting Service Rock's attention with the proposed \$8,800 Settlement.

One week after the Commission's June 17 hearing, Service Rock Products contacted the NDEP-BAPC regarding a permit renewal application the company

thought it had submitted for its concrete batch plant in Pahrump. The NDEP found that it had received no such application, and determined that Service Rock had been operating its Pahrump plant without a permit for about a month (since May 28).

This penalty was difficult to assess. Service Rock's Pahrump batch plant is a small facility, for which the Penalty Table identifies a base penalty of \$800 for operating without a permit. (A Class 3 permit costs only \$300.) Consideration of the violation's recurring nature using the Penalty Matrix) would increase the penalty 45%, to \$1160. Based on the recurrent nature of the violation and the opinion previously expressed by the Commission, we don't believe that such a penalty is appropriate.

To settle this third violation for operating or constructing without a permit, the NDEP-BAPC assessed a base penalty of \$10,000, which represents the maximum penalty for a single violation. Consideration of the violation's recurring nature increases the Settlement to a total of \$14,500.

The Compliance & Enforcement Branch requested that Service Rock Products send a representative to today's hearing in order to answer any questions that the Commission might have.

Mr. David Jokerst, Environmental Manager for Service Rock Products, is present today.

(Break in prepared remarks of Mr. Kennedy)

At Chairman Dodgion's request for any questions from the Commission, Commissioner Gans replied that he would like to hear from the applicant and questioned why we would even re-permit this plant.

Mr. David Jokerst addressed the Commission attempting to explain the violations in detail including how some paperwork regarding the permit renewal process was misunderstood. He also noted the company has hired an additional employee in Nevada who would be responsible for "staying on top of all permitting issues." He also said the fine amount had certainly gotten the company's attention.

Commissioner Gans responded by expressing concerns about repeat violations over a short period of time. Chairman Dodgion then questioned Mr. Kennedy about fine increase for repeat violations; he also asked if the "Division" had ever revoked a permit for repeat violations. Mr. Kennedy said the Division had recently revoked an air permit (American Silac) for repeat violations.

Commissioner Anderson then asked Mr. Kennedy about monitoring and reporting requirements for plants like Service Rock. Mr. Kennedy provided details on the reporting requirements, noting that when repeat violations occur, the Division typically intensifies reporting requirements.

Finally, Commissioner Gans asked Mr. Kennedy that as a result of the permit violations with Service Rock, "were there any significant deleterious environmental impacts as a result of the violations" -- Mr. Kennedy said there were none.

Motion: Commissioner Zimmerman moved to approve NOAV 2149 as written with the recommendation of permit revocation if another violation occurs within a short period of time. The motion was seconded by Commissioner Anderson and was approved unanimously.

Chairman Dodgion asked Mr. Kennedy to continue.

(Continue prepared remarks of Mr. Kennedy)

If you would please refer to Settlement No. 3: (Attachment 1) Vanderbilt Minerals operates a clay mining and processing facility in Nye County. Vanderbilt's air quality operating permit expired in April 2007. In May 2008, a Compliance inspector discovered that Vanderbilt had continued to operate the facility from 2007 through May 2008. The Administrative Penalty Table calls for a penalty of \$3,000 per system for operating without a permit, resulting in a base penalty of \$6,000.

Unfortunately Vanderbilt has a history of non-compliance. The NDEP-BAPC issued Vanderbilt a violation in 2002 for operating without a permit (Vanderbilt allowed its air quality permit to expire), and in 2006 issued a violation for excess (process fugitive) emissions from leaky equipment. Application of the Penalty Matrix to account for the recurring violations increased the base penalty 40 percent, for a total penalty of \$8,400.

(End of prepared remarks)

A lengthy discussion followed with concerns from the Commission about the penalty amount and the length of time the company operated without a permit. A discussion about how recurring violations are determined through use of the Divisions penalty matrix was also explored. There was no representative from the company at the meeting to answer any of the Commissioners' questions.

Commissioner Zimmerman did ask Mr. Kennedy if he knew how much Vanderbilt Minerals had paid in fines to date. Mr. Kennedy said he would get back to her with that number. Commissioner Zimmerman also asked if the recurring

violation was a result of the penalties not being high enough. Mr. Kennedy said the penalty matrix was sufficient to adjust penalties upward. Commissioner Mayer then quizzed Mr. Kennedy about whether or not the fine amount had gotten the company's attention. Mr. Kennedy said he believed the Division now has the attention of the company, although he said he was struck by the companies repeat violation.

A long discussion followed between Mr. Kennedy and Chairman Dodgion about the use of maximum penalties available under the law, versus the use of the Division's penalty matrix for determining "paper work violations" (i.e., operating without a permit).

Chairman Dodgion noted that the Commission would like to see penalties for repeat violations function as a deterrent to future violations. He noted that it shouldn't be cheaper to operate in violation than it is to get a permit.

Commissioner Anderson said that he would like to here from Vanderbilt Minerals concerning how they could overlook operating without a permit for 11 months. Commissioner Gans suggested that Vanderbilt has been a repeat violator and that 11 months was unacceptable for operating without a permit. Commissioner Zimmerman then asked if it was possible to impose a larger penalty; Chairman Dodgion said it was.

Mr. Kennedy acknowledged that the Commission would like to see more severe penalties for repeat offenders who operate without a permit. Commissioner Mayer suggested that a fine of \$10,000 should be the starting point for assessing this fine. Commissioner Gans then suggested that Vanderbilt Minerals should be fined a minimum \$14,000 or higher.

Mr. Mike Elges, Bureau Chief of Air Quality Planning also spoke to the Commission to offer another perspective on this violation. He advised the Commission that it did take the Division a considerable amount of time to find that Vanderbilt Minerals was out of compliance with the permitting process. Chairman Dodgion noted, however, that it is the company's responsibility to be in compliance, regardless of the frequency of state inspections.

The Commission will likely entertain the option to increase the fine beyond the amount presented to them in the Settlement Agreement.

Motion: Commissioner Anderson moved to defer action on the Settlement Agreement until the November 2008 meeting until the Commission can hear from Vanderbilt. Commissioner Gans seconded, with the motion carrying unanimously.

Ms. Reynolds expressed concern about compliance with the open meeting law and the notice that had been provided to Vanderbilt Minerals.

Chairman Dodgion now moved down the agenda to:

**3) Regulation R080-08: Administrative Changes to Chapter 519A,
Reclamation of Land Subject to Mining Operations or Exploration Projects:**

Dave Gaskin, Bureau Chief of Mining Regulation and Reclamation, introduced Ms. Connie Davis, Supervisor of the Reclamation Branch of the Bureau.

(Begin prepared remarks of Mrs. Connie Davis)

Good Morning Mr. Chairman and Members of the Commission. Thank you for your time today.

For the record, I am Connie Davis, Reclamation Branch Supervisor of the Bureau of Mining Regulation and Reclamation.

I am here to present for your consideration, proposed revisions to the reclamation regulations Chapter 519A.

I have four proposed changes to present today. The first 3

NAC 519A.185

NAC 519A.275

NAC 519A.280

provide clarification of surface ownership of lands affected by applications for reclamation permits.

The last proposal amends NAC 519A.350 (2) & (3) that changes trust fund payment details to ensure the trust balance is sufficient at all times to ensure reclamation can be completed and provides clarification that allows the surety company to perform or pay (this is the current practice).

I will now cover the sections of the regulations that are affected by the proposed changes.

(End of prepared remarks)

Ms. Davis went into detail of the proposed changes. NAC 519A.185 proposed modification to 1(c) regarding mailing of written notice of the intent to issue a draft permit or to deny the application.

NAC 519A.275 which covers the requirements for a productive post mining use of the land, Section 5 is proposed to be added to that regulation. It covers if the operator is not the owner of the surface of the affected lands, the Division shall consider any comments received from the landowner.....in making the

final determination that the proposed plan for reclamation adequately provides for a productive post mining use of the land.

The third proposed change, NAC 519A.280, covers the approval required of a proposed post mining use of the land.

Commissioner Anderson asked about the Section 2 #5 new language which says to consider the comments of a landowner, shouldn't the landowner actually sign-off that he approves that post mining use? Ms. Davis replied that currently the way the regulation is written, there is not a formal approval process and the change they want to make is to put the burden clearly stating the applicant is going to give us the owner of record and that we are going to entertain the comments, make sure they are public noticed on the process and that we are seeking their comments during the public notice period. It is not clear now where their consideration comes into place. This is important on lands where the mining operation or the exploration project may not have the surface and the mineral rights.

Commissioner Gans asked for clarification and Dave Gaskin replied that this proposal was to ensure that we get timely comments before the permit is approved and in place, making sure the landowner has an opportunity to comment up front. Senior Attorney General Bill Frey was consulted on the proposal regarding legal rights in terms of real estate. It was felt that offering the public a comment period and the opportunity for the actual landowner to comment on the post mining land use would provides the best opportunity to ensure that a landowner was in agreement with post operation reclamation activities.

Chairman Dodgion welcomed public comments at this time. Mr. John Barber introduced himself stating he works for Marigold Mining Company and is presently the Chairman for the Environmental Committee of the Nevada Mining Association and is here today representing both of those entities. Mr. Barber submitted a letter for the record and also asked to read the letter into the record, which he did. (See Attachment 2)

Motion: Commissioner Anderson moved that LCB file no. R080-08 be approved. The motion was seconded by Commissioner Rackley and the motion was approved unanimously.

Chairman Dodgion now moved down the agenda to:

4) Administrator's Briefing to the Commission

Leo Drozdoff provided the Commission a briefing about: 1) the biennial budget process; 2) certain court actions NDEP is taking with regard to recent EPA rule making actions, and 3) an update on the Jerritt Canyon Mine closure.

Biennial Budget

Mr. Drozdoff said that it is an opportune time to reiterate what has been said in the past, that the budget process has been very difficult for the Department of Conservation and Natural Resources of which Commissioner Anderson, Commissioner Taylor and I are part. He noted that NDEP is fortunate in that it is largely a non-general fund agency. The majority of NDEP's funding comes from fees and a significant portion, although shrinking still comes from federal grants.

Mr. Drozdoff said that tangibly, what NDEP had to do to comply with 14% cuts on top of other base year cuts was keeping two general fund positions in place and not increasing any general fund expenditures. The two positions to remain vacant are in the Bureau's of Safe Drinking Water and Bureau of Water Quality Planning.

He said the Divisions primary responsibility in the overall Department plan was to keep certain positions vacant to provide openings for the other Divisions within the Department that had layoffs. He noted that this hopefully would provide the Division of Water Resources, Forestry, Lands, and Parks a place for folks they felt they would need to layoff. He noted this was a brutal process but good in the respect that Allen Biaggi and Kay Scherer did an excellent job in working with all of the Divisions to make the process go as good as it could.

Because of job classifications or specifications, he noted that NDEP was not able to handle all of the layoffs or potential layoffs that could occur because the Division doesn't have those type positions. But anyplace we did, he said the Division was able to keep positions open to accommodate the layoffs.

Conflict with US EPA

Mr. Drozdoff said that Nevada and other states have had a really difficult time with EPA. He said there is always tension that you get dealing with a group like EPA who does have regulatory oversight responsibilities in the programs that they delegate to states. That tension, he said has greatly increased over the last two years, most of it stemming from the issue of funding because EPA continues to cut state budgets but increases workload requirement and other directives. He noted that states are getting to the point that they can't do more with less. "We are not able anymore to have meetings with EPA and get any tangible results." "It used to be that when these tensions would hit various low points, we could sit down with EPA's Regional Administrator or other senior program people and work it out." He said the Division doesn't have that opportunity anymore; the Region runs largely on what they feel they

need to do. He said there isn't a whole lot of discussion we can have anymore because the ability to find mutually agreeable solutions doesn't exist. "So we essentially agreed to disagree with them on a couple items." He stated that the Division's only venue is the courts and that is where we are with two issues, one in air and one in water.

In the case of water, it's a national rule, the National Fee Incentive Rule. Essentially because they have budget problems, they want to start dictating to states that if you don't have adequate fees to run programs, which we do, a lot of states don't, there will be the ability for EPA to pick some of that off and give more resources to states that have fees. Through the rulemaking process they received close to a thousand comments, not one of which was favorable. They have proceeded anyway. Our biggest concern is the precedent it sets. If you read the Clean Water Act, EPA has no business getting involved in talking to the states about what they can do about fees. If they are going to start telling states what they can do about fees then they will probably consider expanding at their own pleasure when it suits them, things they think the Clean Water Act says. So we feel it's very important to take a principle stand.

Mr. Drozdoff said the two states that have taken a lead on this are Nevada and New York. He noted that there are at least five other states that are interested in joining while acknowledging that Tom Porta (Deputy Administrator NDEP) has been the primary person handling this along with Bill Frey from the Attorney General's Office. Mr. Drozdoff said unfortunately, we find that this is our remedy. "We are hoping that when there is a new administration in place that maybe things will change."

Mr. Drozdoff said the second issue with EPA is in air programs and Colleen Cripps, Deputy Administrator NDEP is the primary point for the Division. He said that this has to do with various State Implementation Plan disapprovals taken by EPA. "We spent years doing what EPA told us to do, as records show, and we had meetings where we thought things were viable only to actually do all that work and then be told by EPA that they don't agree with what we did." Mr. Drozdoff said the Division has attempted to deal with EPA, and the first step in going before the 9th circuit court is mediation so the Division is going through with that. He said that if EPA changes its mind on certain things, that would be great; going to court takes an incredible amount of time and is not something the Division desires.

In the future Mr. Drozdoff said the Division will likely do the same with other issues when unfunded mandates or other actions that EPA takes are not in accordance with actually federal or state rules.

Jerritt Canyon Mine

Mr. Drozdoff said this mine is not a small mine and has been in existence for a while as a very active mine and mill operation. In the middle of August, he said that basically the entire workforce at the mine was laid off with very little warning. He noted there was no money, there were a lot of questions and for a short period of time there was almost nobody that knew what was going on. Former employees didn't know they were former employees. NDEP took a very active role and Dave Gaskin and his staff were dispatched to the site to try to determine what was happening. Essentially the employees were all let go, a small group was brought back to provide security. "What we've done as an agency is to maintain a continuous workday presence since that time."

Mr. Drozdoff said the issues NDEP has with Queenstake span many programs: Mining, Air, Water, Waste, and Corrective Actions. The Division has put together teams that on a weekly basis go out to the site and make assessments of various improvements. The Division has been working with the company Yukon Nevada Gold and we have been very clear in advising the applicant. It would be unprecedented if the Division had to get in the business of reclaiming a mine and would be an enormous amount of work. Clearly the Division's preference would be to see if the mine can right itself and continue to do what they are required to do under all of our program responsibilities.

Having said that, the Division is not going to leave it to chance or to leave it to the mining company to ensure all environmental issues are taken care of. Nevertheless, Mr. Drozdoff said the company has made very good progress on many issues.

He said the company is addressing many of the mining issues identified by the Division in a recently issued eight page letter. Mr. Drozdoff said what has complicated the mine closure is the fact NDEP has issued a Notice of Violation to the company for failing to comply with the requirements of the Division's Mercury program. "Because they've let everybody go, many of those commitments that they've made pursuant to starting the mill back up and starting the roaster back up so that they would have a revenue stream have not been accomplished." Mr. Drozdoff said the Division has been very clear with the company that they don't get to decide when they turn the mill and the roaster back on, that they have various commitments and they are going to have to spell out in advance what they are going to have to do. He said the company wants to start the mill and roaster as soon as possible so they can generate revenue to become a viable facility again. The problem the Division has is that "we are not just going to take it on faith; should the company not be up to the task, the Division will be ready take over the operation to protect the environment."

Commissioner Mayer asked if there is adequate bonding in place to which Mr. Drozdoff replied "We do have -- there is roughly \$45 million bonding in place." Mr. Drozdoff said it takes a while to be paid through the bonding and that

interim funding and emergency contracting is in place to cover operating supplies and other costs.

Commissioner Anderson asked if the US Forest Service is a partner to assist the Division. Mr. Drozdoff responded that they have been very good about site security and have been included in the briefings. He said they are also a co-bondholder.

Dave Gaskin spoke to the challenges for security which stem from the scope and size of the facility which is about 120 square miles. He said the Forest Service, as well as local sheriff, maintain a presence and patrol areas on a more frequent basis.

Mr. Drozdoff said that the people NDEP had been dealing with at Jerritt were gone and NDEP had to re-educate the new group as to what the commitments are and give them a list of items they need to do in order to talk about restarting. Exactly at what point NDEP would possibly take over reclamation if necessary, is a gray area and would be a subjective call.

Mr. Drozdoff's briefing being concluded, Chairman Dodgion moved to the next item on the agenda.

5) Public Comment

There was no additional public comment under this item.

Mr. Walker noted for the Commission that the next meeting would be November 12th in Reno at the Nevada Department of Wildlife. He said it would be an all day meeting with a full agenda.

Adjournment: When there was no further comment, Chairman Dodgion declared the meeting adjourned.