

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

**Meeting of October 5, 2010, 10:00 AM**

Video Conference between  
NDEP, Carson City  
901 S. Stewart St., Tahoe Room  
and  
NDEP, Las Vegas  
2030 E. Flamingo Rd., Red Rock Conference Room

**Members Present:**

(Eugene) Jim Gans, Chairman  
Alan Coyner, Vice Chairman  
Jason King  
Kathryn Landreth  
Tony Lesperance  
Pete Anderson  
Ken Mayer  
Frances Barron

**Members Absent:**

Harry Shull  
Stephanne Zimmerman

**SEC Staff Present:**

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

**BEGIN SUMMARY MINUTES**

The meeting was called to order at 10:00 am by Vice-Chairman Coyner who noted the hearing was properly noticed and there was a quorum. Mr. Coyner introduced Mr. Jim Gans in Las Vegas who has been appointed Chairman of the State Environmental Commission. Mr. Coyner will co-chair the meeting from Carson City with Mr. Gans from Las Vegas.

**1) Approval of minutes for the June 17, 2010 regulatory hearing - Action Item**

Mr. Lesperance moved to approve the minutes of the June 17, 2010 hearing as written, Mr. Mayer seconded and the motion passed.

**2) Settlement Agreements, Air Quality Violations - Action Item**

The Settlement Agreements table is shown in **ATTACHMENT 1**. Penalties are based on the Administrative Penalty Table and Penalty Matrix adopted by the Commission.

The specific violations and settlement agreements were presented in detail by Mr. Francisco Vega, Supervisor of the Compliance and Enforcement Branch for the NDEP, Bureau of Air Pollution Control. For Mr. Vega's full statement, see **ATTACHMENT 2**.

- Heart of Nature, NOAV 2223 for constructing a fuel processing facility without the required air quality operating permit. Mr. Vega discussed the violation and NDEP actions. On March 24, 2010 an enforcement conference was held with Heart of Nature to discuss the violation and possible penalty during which Heart of Nature and NDEP agreed the issuance of the NOAV was warranted.

Based on the penalty table, a total of \$19,200 was assessed and Heart of Nature has signed the Settlement Agreement.

Representatives for Heart of Nature were in attendance at the Las Vegas location and said they accept the agreement and wish to move forward in full compliance.

**Motion:** Mr. Anderson moved to accept the Notice of Alleged Air Quality Violation & Order No. 2223. Mr. King seconded and the motion passed unanimously.

At this point, Commissioner Frances Barron joined the meeting in Las Vegas.

- Eagle Peak Rock and Paving, Inc., NOAV 2248, 2249, 2257, and 2258 for failure to install required air pollution control equipment and exceeding permitted emission limits. Mr. Vega discussed the violations and NDEP actions. On July 28, 2010 an enforcement conference was held with Eagle Peak. During the conference Eagle Peak admitted to exceeding permitted capacity limits and failing to install controls. Eagle Peak provided evidence that controls had since been installed and necessary changes had been made. Eagle Peak agreed that the NOAVs were warranted.

Based on the penalty table, a total penalty of \$30,800 was recommended by NDEP-BAPC.

Commissioners discussed and clarified several issues with Mr. Vega. It was established that there was not a signed Settlement Agreement.

Mr. Matt Cruse of Eagle Peak Rock and Paving was asked to address the Commission. Mr. Gans asked Mr. Cruse if Eagle Peak accepted the penalty and Mr. Cruse said they did not want to accept the penalty. Ms. Reynolds said that because this matter was on the agenda as a settlement agreement, if Eagle Peak did not accept the settlement agreement and wanted to appeal in any way, this matter needed to be pulled from the agenda and continued to another meeting.

Ms. Reynolds clarified that if NDEP was open to changing the amount of the penalty and Eagle Peak agreed to the amount, a settlement agreement could be approved on this agenda. If NDEP was not open to changing the amount, the matter would have to be continued to another meeting.

Dr. Colleen Cripps, Administrator for NDEP said NDEP negotiated in good faith and used the penalty matrix to assess an appropriate penalty. Dr. Cripps said if the Commission wished to consider extenuating issues and modify the settlement amount that would be up to the Commission; she didn't feel NDEP had any basis for modifying that penalty.

The settlement agreement for Eagle Peak was pulled from the agenda and will be moved to the December 2010 meeting.

- Lake Tahoe Horizon Casino Resort, NOAV 2232 and 2252 for operating without a valid air quality operating permit for an extended period of time and failing to conduct required emissions testing. Mr. Vega discussed the violations and NDEP actions. NDEP attempted on numerous occasions to make contact with someone who was authorized to represent Horizon; messages from NDEP were unanswered. After further research for a contact, on March 23, 2010 the NDEP met with representatives of the Horizon Resort to determine the current organizational structure and discuss the violations. Based on the results of the enforcement conference, Horizon agreed that issuance of the NOAVs were warranted.

Based on the penalty table, a total penalty of \$38,100 is recommended by NDEP-BAPC. There is not a signed settlement agreement.

Commissioners discussed the violations and penalty calculation with Mr. Vega. There was no representative from Horizon at the meeting. There was discussion regarding whether or not Horizon had received the penalty notice and the status of Horizon's appeal rights. Without a signed settlement agreement and because this was agendaized as an agreement, Ms. Reynolds advised this be pulled from the agenda, another letter be sent to Horizon and the penalty recommendation be put on the agenda for the next meeting.

**Motion:** Ms. Barron moved the Horizon settlement agreement relating to NOAV 2232 and 2252 be tabled. Motion was seconded by Ms. Landreth and passed unanimously.

A discussion occurred regarding the manner in which proposed penalties are brought to the Commission and possible remedy for future penalties and the way these are agendaized. Mr. Gans suggested that before the next meeting he, Dr. Cripps, the AG's office and Mr. Walker get together to discuss procedures for presentation of penalty recommendations to the Commission.

### **3) Administrative Action, Air Quality Violation - Notice of Alleged Air Quality Violation and Order (NOAV) No. 2247, Cind-R-Lite Cinder Cone Mine - Action Item**

Mr. Vega gave the Commission full details of NOAV 2247 for failure to comply with permitted emission limits and the actions taken by NDEP. At the July 28, 2010 enforcement conference, Cind-R-Lite and NDEP concluded that an exceedance violation had occurred and that issuance of NOAV 2247 was warranted.

Based on the penalty matrix a total penalty of \$3,600 is recommended by the NDEP. There is not a signed agreement.

Comments from the public were invited. Ms. Ekco Hernandez, Building Director for Allied Building Materials and Cind-R-Lite Block Company spoke to the Commission on behalf of Cind-R-Lite. Ms. Hernandez said they understand they were in violation of their permit. However, she explained, during a previous inspection, the same inspector made suggestions for the company to avoid any future violations, upon which the company acted. Because of the cost in implementing previous suggestions and the company's attempt to be in compliance, Cind-R-Lite was asking for a reduced fine.

Commissioners had various questions of Ms. Hernandez and Mr. Vega. It was established that the company was cooperative and that the penalty matrix makes allowances for such cooperation.

**Motion:** Ms. Barron moved the penalty to Cind-R-Lite for NOAV 2247 be limited to the base penalty of \$600. Mr. Mayer seconded the motion and the motion passed, with Mr. King voting "Nay".

Minutes continued on next page. . . . .

## Air Quality Planning/Air Pollution Control

### 4) Regulation R126-10: Air Pollution Control Permitting Provisions Applicable to State Implementation Plan (ASIP) - Action Item

Ms. Adele Malone, Supervisor of the Planning & Modeling Branch, Bureau of Air Quality Planning presented this regulation to the Commission. For Ms. Malone's full testimony, see **ATTACHMENT 3**.

This regulation consists of amendments to four sections of the air program's operating permit provisions which are in response to U.S. EPA comments on the approvability of the agency's air permitting provisions into Nevada's applicable State Implementation Plan or ASIP.

**Motion:** Ms. Landreth moved to approve LCB file draft R126-10 with the agency's change to section 4. The motion was 2<sup>nd</sup> by Mr. Anderson and passed unanimously.

## Water Quality Planning

Mr. John Heggeness, Bureau of Water Quality Planning (BWQP) -Water Quality Standards Program, began with an overview pertaining to all of the four following proposed regulations. Before proceeding Mr. Heggeness noted that under the Clean Water Act, tribes are treated as states so that if the water quality standards the State has on tribal lands are not appropriate, then they are not applicable. He noted that one of the things these changes in the regulations will be doing is to remove those sections in the Administrative Code that are on tribal lands.

Mr. Heggeness spoke to the Commission at length regarding the next four regulations; he followed slide printouts which were included in the Commission packets. Mr. Heggeness also answered questions from the Commissioners concerning the purpose of establishing beneficial uses and the process for setting standards based on the uses as well as other clarifications. To view the slide printout, see **ATTACHMENT 4**.

### 5) Regulation R129-10: Water Quality Standards for Class D Waters & Removal of Legal References for Certain Tribal Waters - Action Item

Due to a substantial correction which needed to be made to this proposed regulation, Mr. Heggeness said R129-10 was being pulled from the agenda and would be proposed at a later hearing.

### 6) Regulation R127-10: Proposed Changes to the Water Quality Standards for Smoke, Bronco, and Gray Creeks - Action Item

Mr. Heggeness noted that this regulation is proposed to assess the 3 creeks, add beneficial uses, add Reach description as well as add appropriate numeric criteria to protect the beneficial uses.

**Motion:** Mr. Lesperance moved to approve R127-10 including submitted corrections. Motion was seconded by Mr. King and passed unanimously.

#### 7) Regulation R130-10: Administrative Updates Colorado Salinity - Action Item

Mr. Heggeness noted said this regulation simply updates NAC 445A.143 to reference the most recent report, which was issued in 2008 and will replace "presented" with "adopted".

**Motion:** Mr. Anderson moved to approve R130-10; seconded by Ms. Landreth and passed unanimously.

#### 8) Regulation R133-10: Proposed Changes to Select Water Quality Standards for Nevada Waters in the Snake River Drainage Basin - Action Item

Mr. Heggeness provided the names of the existing major bodies of water in the Snake River Basin and discussed changes to the regulation to define the reach or segment applied and added or amended standards. Mr. Heggeness named the four bodies of water proposed to be added and also discussed the beneficial uses and criteria. The waters on Duck Valley Indian Reservation Lands were proposed to be removed.

**Motion:** Ms. Landreth moved the regulation including submitted corrections be adopted. Mr. Mayer seconded and the motion passed unanimously.

#### 9) Administrator's Briefing to the Commission: Non-Action Item

Dr. Cripps congratulated Jim Gans on his appointment as the new Chairman of the SEC and then reported the following:

- ❖ Budgets were submitted for all NDEP programs and a \$2 million grant from DOE was secured which will be used to offset state general funds for selected programs at DEP and DCNR.
- ❖ Mercury: NDEP was finally able to reach an agreement with the Defense Logistics Agency (DLA) on the shipping, storage and long term management of the nation's Department of Defense (DOD) stockpile of mercury. DLA manages the DOD stockpile and has been in the process of consolidating the stockpile for 10 years, in 2004 choosing the Hawthorne Army Depot as the long term storage location. In 2006, NDEP began discussions with DLA regarding appropriate environmental regulation of the mercury. The SEC amended the Chemical Accident Prevention Program (CAPP) regulations to include mercury as a regulated highly hazardous substance. In 2007, the Legislature made similar amendments to the CAPP provisions. Since then, NDEP has been working closely with DLA and Hawthorne to develop a CAPP compliant program which was approved in August 2010. A successful pilot scale project was completed on September 2<sup>nd</sup> with full scale shipping begun in late September. Dr. Cripps noted that providing that everything stays on schedule, NDEP anticipates all the Mercury will be shipped by the end of 2011 or early 2012.
- ❖ Nevada Mercury Control Program: This state-only program was developed to address mercury air emissions from the precious metal mining industry and is going well. It is expected that all the mercury emitting units at Nevada's mines will be permitted by the end of the year. NDEP has also been working very closely with the US EPA as they develop federal mercury control requirements for gold mining to ensure that the federal program would be compatible with Nevada's program. The final federal rule is expected to be out by the end of the year.

❖ New Federal Regulatory Initiatives:

- The US EPA is now taking steps to regulate GHG emissions. Two different sets of GHG requirements have been adopted by the EPA:
  - a mandatory reporting rule
  - the requirement that sources emitting GHGs over 100,000 TPY be permitted.
- EPA is also working on rules to cut emissions of mercury from coal-burning power plants and cement plants and on toughening the rules on coal ash. NDEP is currently in the process of responding to EPA proposed rulemaking regarding the management of coal ash.
- EPA is in the process of issuing a number of new ambient air quality standards for criteria pollutants. The new standards are significantly lower than the current standards and will probably result in a number of new non-attainment areas in Nevada. These new standards may also significantly affect the way NDEP currently issues permits and may result in significant changes to our air program.

Ms. Barron asked that Mercury storage be agendaized at the next meeting.

10) **Public Comment: Non-Action Item**

No comments.

Meeting was adjourned at 12:41 pm.

## ATTACHMENTS

- ATTACHMENT 1: Settlement Agreements Table
- ATTACHMENT 2: Statement: Mr. Francisco Vega
- ATTACHMENT 3: Statement: Ms. Adele Malone
- ATTACHMENT 4: Slides printout: Mr. John Heggeness

# ATTACHMENT 1

# ATTACHMENT 2

# ATTACHMENT 3

# ATTACHMENT 4