



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

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

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of February 13, 2013 10:30 AM

Bryan Building Carson City
901 South Stewart Street

Members Present:

E. Jim Gans, Chairman
Jim Barbee
Cary Richardson
Alan Coyner
Jason King
Tom Porta
Mark Turner
George Tsukamoto

Members Absent:

Frances Barron
Kathryn Landreth
Pete Anderson

SEC Staff Present:

Rose Marie Reynolds, SEC/DAG
John Walker, Executive Secretary
Misti Gower, Recording Secretary

BEGIN SUMMARY MINUTES

The meeting was called to order at 10:30 am by Chairman Jim Gans who stated the hearing was properly noticed and there was a quorum.

1) Public Comments (Action Item): Chairman Gans called for public comment; hearing none Chairman Gans acknowledged a letter received February 7, 2013 from Mr. John Bosta (**See Attachment I**). Hearing no comment on the letter he moved to agenda item number 2. Of note, Chairman Gans advised the commission that the substance of Mr. Bosta's letter didn't appear to be "Commission" business, and as such he referred the matter to staff of the Nevada Division of Environmental Protection.

2) Approval of Agenda (Action Item): Chairman Gans took a moment to introduce George Tsukamoto, Acting Director of the Department of Wildlife, welcoming him to the Commission. He then announced that item 5B on the agenda i.e., NDEP's request to dismiss appeal filed by the Mud Camp Mining Company, had been withdrawn. He then requested comments on the agenda with 5B removed; hearing none, he asked for a motion to adopt the agenda. Commissioner Turner moved to approve the agenda minus item 5B and Commissioner Barbee seconded; the motion passed.

3) Approval of the minutes for the December 5, 2012 SEC meeting (Action Item): Chairman Gans requested comments from the Commission on the December meeting minutes; hearing none

he asked for a motion to approve the minutes. Commissioner Barbee moved to approve the minutes and Commissioner King seconded; the minutes were approved as written.

4) Penalty Assessments for Air Quality Violations - (Action Item): Chairman Gans asked if there were any recusals from the Commission. Commissioner Coyner said he would be abstaining from Western State Gypsum as the Division of Minerals holds a reclamation bond on another property owned by Mr. Art Wilson.

Mr. Michael Elges, Deputy Administrator for Nevada Division of Environmental Protection, presented the specific violations and recommended penalties for the following three (3) companies listed below. **See Attachment II for Penalty Recommendation Table.** The audio of the meeting with full discussions of each assessment may be heard at: <http://sec.nv.gov/audio0213/index.html>
Mr. Elges explained that none of the violations being presented today had been appealed.

A. Gold Canyon Mining and Construction, LLC – Penalty Assessments (NOAV) Nos. 2402-2406 for alleged failure to comply with several requirements set for in Class II General Air Quality Operating Permit AP1442-2807.02 COLA 2290 (FIN A1231). The recommended penalty amount is \$24,600.00.

B. Western States Gypsum – Penalty Assessments for Air Quality Violations (NOAV) Nos. 2416, 2417, 2418, and 2419 as per Class II Air Quality Operating Permit AP1499-0504.02 (FIN A0739). The NOAV(s) alleged failure to obtain a valid air quality operating permit for a regulated emission unit. The recommended penalty amount is \$25,200.00.

C. H.E. Hunewill Construction Company – Penalty Assessments for Air Quality Violation (NOAV) Nos. 2424 for the alleged failure to comply with a permitted opacity limit as per Class II General Air Quality Operating Permit AP1442-0090.02, COLA 2315 (FIN A0037) recommended penalty \$6,000.00.

Gold Canyon Mining and Construction, LLC: Mr. Elges presented the Commission with detailed information about the company, the violations and penalty assessment. Chairman Gans asked if there was a representative from the company; Mr. Karry Bjornson, representative for Gold Canyon Mining came forward to address the Commission. Mr. Bjornson explained to the Commission that while it was true there were deficiencies on the job site, there was nothing on the NOAVs indicating there would be a fine. He believed these notices were warnings; they took corrective action and were allowed to start operation again.

Mr. Bjornson asked the Commission for leniency. He said Gold Canyon is no longer in operation; the company is insolvent and really can't pay a fine of this magnitude. Commissioner Coyner questioned the length of time the company operated without dust suppression. Mr. Bjornson explained there were certain drop points and most were operating. The ones that weren't were drop points from one conveyer to another and incorrectly determined to not be significant. Mr. Elges explained that NDEP inspectors were in the area and could see the dust and during the investigation NDEP was told that the controls had not been operating for six months.

Commissioner Turner asked if the company had filed for bankruptcy. Mr. Bjornson explained that it had not, that the company was trying to withdraw gracefully and didn't have the money or assets to pay such a large fine.

Scott Lehman, former operations manager with Gold Canyon, addressed the Commission to explain there was a water tank and pumps installed and they had drops at all the major drop points. He agreed that some of the suppression points were not in operation, and at the time the inspector was there, the water tank was empty. Chairman Gans stressed that the evidence is quite condemning and the Commission is there to discuss the recommended fine and not the details of the penalty.

Motion: Chairman Gans asked for a motion, where upon Commissioner King moved for approval of the recommended fine of \$24,600.00 for Air Quality Violation No. 2402-2404. Commissioner Richardson seconded the motion, and it passed unanimously.

Western States Gypsum: Mr. Elges presented the background information on the violations and penalty assessments, explaining that there were four NOAVs issued, three were warnings, NOAV 2416 is for constructing and operating a regulated emission unit without a valid permit. Mr. Elges went on to explain there had been seven previous NOAVs in the last 5 years, two for unpermitted equipment. Commissioner Porta expressed concern because the company has been in business for over 40 years, wondering what their explanation was in the enforcement conference; Mr. Elges was not at the enforcement conference and couldn't answer the question.

Chairman Gans asked if there was a representative from the company, Mr. Ken Schmick, Controller of Western States Gypsum, came forward, giving the Commissioners a handout (**See Attachment III for additional details**). Mr. Schmick explained they were trying to devise a new loading technique, wanting to figure out the procedure before updating their permit. After meeting with NDEP they did get proper permitting and understood there would be a fine; they were never informed of the magnitude of the fine. A letter was received from NDEP informing them of a fine and their right to appeal. The decision was made to pay the fine thinking it would be a few thousand dollars and not \$25,200.00, therefore they did not appeal.

Mr. Elges answered a field of questions from the Commission about the process of permitting and regulations, assuring the Commission that NDEP permits experimental equipment all the time.

Mr. Art Wilson, from Western States Gypsum, came forward to speak to the Commission, expressing great concern for the fine amount. He said they had met with NDEP to discuss the violation but the fine amount was never told to them until they received the letter from the SEC.

The Commission had concerns about what was said in the enforcement conference between Western State Gypsum and NDEP. Mr. Elges told the Commission that the staff attending the enforcement conference was not available today. Mr. Elges also explained how an enforcement conference works. He also said he was not present at the enforcement conference.

Motion: After extensive discussion, Chairman Gans asked for a motion, where upon Commissioner Porta moved to table the matter for a future SEC meeting whereupon the appropriate NDEP staff who attended the enforcement meeting could provide testimony to the commission. Commissioner Turner seconded the motion and it passed unanimously, with Commissioner Coyner abstaining.

H.E. Hunewill Construction Company: Again Mr. Elges presented the Commission with background information about the violation and penalty assessment. Commissioner Porta asked how long the company had been shut down due to violations and if that was taken into consideration concerning the fine assessment. Mr. Elges explained they were shut down for 2-3 days, however once the issue was fixed they went back to work. No representative was present from the company.

Motion: With no further discussion, Chairman Gans asked for a motion, where upon Commissioner Porta moved for approval of the recommended fine of \$6,000.00 for Air Quality Violation No. 2424. Commissioner Barbee seconded the motion, and it passed unanimously.

5) Motions to Dismiss Appeals of Air Quality Violations - (Action Item): Ms. Jasmine Mehta, Deputy Attorney General, presented the motion to dismiss to the Commission.

- A. Pursuant to NAC 445B.894(4), the SEC will consider NDEP's motion to dismiss the September 2, 2008 appeal filed by Galtar, LLC regarding Air Quality Violation No. 2140, 2141 and 2142 due to failure to bring the matter for hearing within one year of the appeal.

Ms. Mehta explained the company was given two minor violations and one major violation for operating without a permit in 2008. NDEP has only heard from the company once since the notice of appeal was filed in September 2008. If the SEC approves the request for dismissal, NDEP would uphold the minor violation and then would come back before the SEC with a fine recommendation for the major violation which the company would not be able to appeal. The company has been notified of the recommended fine on the major violation. No representative was present from the company.

Motion: With some discussion, Chairman Gans asked for a motion, where upon Commissioner Richardson moved to dismiss the appeal filed by Galtar LLC regarding Air Quality Violation No. 2140-2142. Commissioner King seconded the motion, and it passed unanimously.

6) RO52-12: DMV Smog Check Program - (Action Item): Debbie Shope with the Department of Motor Vehicles (DMV) presented to the Commission DMV's proposal to create a new, voluntary program which will allow fleets to comply with motor vehicle emissions testing requirements by means of engaging the services of an authorized vendor of an electronic data management and monitoring system. Under this program, vendors will attach electronic devices to fleet vehicles that will monitor the vehicles' emission control systems and transmit emissions compliance data directly to the DMV in an electronic format. This electronic format means of demonstrating compliance eliminates the need for the fleet owner to take the vehicle to an emissions testing facility for the annual emissions test. By statute, the fleet owner is still responsible for paying the \$6.00 emissions certificate fee that would normally be charged at an emissions testing facility. The proposed

regulation establishes the requirements and procedures that fleet operators and authorized vendors must follow to participate in the program.

Ms. Shope answered a variety of questions from the Commission. She noted that onboard monitoring devices are being used in other states as well and NV Energy is the largest company in Nevada currently using these monitoring devices. The system provides daily reports that are sent from the vendor to DMV notifying them of any vehicle that is not in compliance. Ms. Shope informed the Commission that a vendor was available to answer questions.

The Commission called upon Mr. Steve Yarborough, Director with Fleet Solutions, to answer questions about the device. Mr. Yarborough explained the device has several different ways it monitors the vehicle making it hard to tamper with. They already have the system in 2000 vehicle in Washoe and Clark County. Owners know within minutes if the vehicle is not operating properly or not in smog compliance. The device saves money for the companies by letting them know when repairs need to be made and vehicles don't need to be taken out of the field unnecessarily. Mr. Yarborough and Ms. Shope provided extensive information to the Commission regarding the monitors.

Chairman Gans asked for public comment. Mr. John Handzo with UNR Small Business Development asked if there was ways for the device to monitor air pollution, helping the counties meet EPA Air Quality standards. Mr. Yarborough explained the device monitors the equipment but if the vehicle is operating correctly it's meeting federal standards for that vehicle.

Motion: With no further discussion, Chairman Gans asked for a motion, Commissioner Porta made a motion to accept RO52-12, DMV Smog Check Program. Commissioner King seconded the motion and it passed unanimously.

7) Administrator's Briefing to the Commission

NDEP Administrator Dr. Colleen Cripps briefed the Commission on recent changes and updates. Rob Bamford is now Bureau Chief for Air Pollution Control and they would be opening the vacant Chief position for Air Quality Planning.

Dr. Cripps also spoke about certain legislative requirements concerning rule making. Dr. Cripps explained that she was notified in December 2012 by a Legislator to ensure NDEP was in compliance with NRS233B.050; this law requires a review of an agency's "Rules of Practice" every 3 years, with the review to be filed with the Secretary of State; and this applies to SEC Rules of Practice, which were updated in 2012. The law further requires all agency regulations to be reviewed every 10 years, with a report of the review submitted to the Legislative Council Bureau. With assistance from staff of the SEC, Dr. Cripps noted that the required reports were developed and made available to LCB and the Secretary of State's office.

Dr. Cripps continued by advising the Commission that NDEP had its budget hearing which went well. In this budget cycle she said that NDEP has requested eight new positions, six of which are proposed

in the air programs. She noted that the SEC's budget didn't require a hearing and will proceed through the normal channels towards approval.

She advised the Commission that NDEP is tracking numerous bills that could affect agency. She did say that NDEP has a Bill (SB65) which is designed to clarify NDEP's enforcement authority in the Safe Drinking Water program and bill will be considered on March 21st.

Commissioner Porta asked about EPA's partial disapproval of the 303D list concerning mercury contamination in fish. Dr. Cripps explained that the Division is drafting a response to that decision and has been working with EPA for some time on the matter.

Commissioner Coyner inquired about the Division transparency practice and if permit applications were available on line. Dr. Cripps explained that because some applications are so large with complicated maps, the Division hasn't been able to put all applications on line. Dr. Cripps said the water bureau was implementing a new program that will allow applications to be submitted and viewed on line.

8) Public Comment: Chairman Gans asked for any public comments; hearing none he asked when the next SEC meeting would be held. The next meeting will be held June 12, 2013; the location is undecided at this time.

9) Meeting was adjourned.

ATTACHMENTS

ATTACHMENT I: Public Comment, Letter from Mr. Bosta

ATTACHMENT II: NDEP-BAPC Penalty Recommendations

ATTACHMENT III: Western States Gypsum Handout

Nevada State Environmental Commission
901 So. Stewart St., Suite 4001
Carson City, NV 89701

February 7, 2013

RE: NV0023027 – Ponderosa Dairy

Mr. E. James Gans and Commissioners,

I am still concerned in the monitoring of the groundwater under the Ponderosa Dairy. Per a decision rendered by the State of Nevada Environmental Commission (SEC) on **January 20th, 2010** regarding an appeal proceeding on discharge permit **NV0023027 – Ponderosa Dairy**, it was mandated that this facility must implement and incorporate a comprehensive groundwater monitoring plan for its operation in Amargosa Valley, Nevada. This ground water monitoring plan included the installation of five (5) new monitoring wells and their respective incorporation into its permit.

NDEP was instructed to make monitoring reports available to the public through the division's website. The first monitoring report, December 2010 was posted upfront on the NDEP website main page. Today, it is very difficult to find the monitoring reports. One must go through these menu's; NDEP Program & Services, Water Pollution, What's New, and March 2010 Ponderosa Dairy Groundwater.

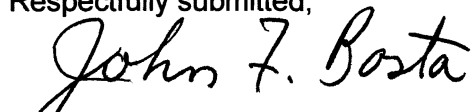
A copy of the permit NV0023027 is not online. The permit and the authorization to discharge expired at midnight, November 3, 2012. The permit has not been renewed as of February 7, 2013. I talked with Permit Branch Supervisor, Cliff Lawson. He says his permit staff is working on a new permit

Monitoring Well #3 (MW-3) has had three quarter reports with total nitrogen-N concentration of 10 or greater; 4th quarter 2011 had a concentration of 11, 2nd quarter 2012 had a concentration of 10, and 3rd quarter 2012 had a concentration of 12.

The Monitoring Wells are to ensure that the groundwater quality is protected. Monitoring well No. 3 (MW-3) is located down gradient of the lined wastewater lagoon for Barn 3 and monitors seepage from the Barn 3 waste water lagoon. It appears the seepage from waste water lagoon # 3 is contaminating the groundwater.

February 6th I called Joe Maez the Technical, Compliance & Enforcement (TCE) Branch Supervisor, who described the process taken by TCE. The dairy requested to do a one year study to determine the cause for of the increase of the Total Nitrogen-N 10 or greater in the quarter reports for MW-3. The result of this one year study is due in two weeks from now. After the TCE receives the report a decision will be made on what actions should be taken by TCE.

Respectfully submitted,



John F. Bosta

NDEP-BAPC PENALTY RECOMMENDATIONS - February 13, 2013

TAB NO.	COMPANY NAME	VIOLATION & PENALTY SUMMARY	NOAV NUMBER	RECOMMENDED PENALTY
1	Gold Canyon, Nye County	<p><u>NOAV 2402</u> Violation: Failure to have the permit posted on-site Requirement: Permit will be posted conspicuously at or near the stationary source. (NAC 445B.318.5) Emission Unit : N/A</p> <p>Base Penalty: \$600, for Class 2 Minor Source Magnitude (Multiplier): N/A Violation History (Adjustment): N/A Total Penalty: \$600</p> <p><u>NOAV 2403</u> Violation: Failure to install and operate required air pollution controls Requirement: Install and operate wet dust suppression on various emission points Emission Unit : Crushing and Screening Plant</p> <p>Base Penalty: \$1,000, for Class 2 Minor Source Magnitude (Multiplier): 3 Systems for 6 months (18x) Violation History (Adjustment): N/A Total Penalty: \$1,000 x 18 = \$18,000</p> <p><u>NOAV 2404</u> Violation: Failure to comply with a permitted emission limit. VEO was conducted and found the opacity to be 92%. Emission Limit: 10% Opacity Emission Unit : Screen</p> <p>Base Penalty: \$600, for Class 2 Minor Source Magnitude (Multiplier): Extremely High Amount (6x) Violation History (Adjustment): N/A Total Penalty: \$1,000 x 6 = \$6,000</p>	2402, 2403 and 2404	\$24,600

NDEP-BAPC PENALTY RECOMMENDATIONS - February 13, 2013

TAB NO.	COMPANY NAME	VIOLATION & PENALTY SUMMARY	NOAV NUMBER	RECOMMENDED PENALTY
2	Western States Gypsum, Lyon County	<p><u>NOAV 2416</u> Violation: Constructing and operating a regulated emission unit without a valid air quality operating permit. Requirement: Apply for and acquire a valid air quality operating permit prior to the construction and operation of a regulated emission unit. Emission Unit : Hopper and Conveyor Belt</p> <p>Base Penalty: \$1,000, for Class 2 Minor Source Magnitude (Multiplier): 2 Emission Units for 12 weeks (24x) Violation History (Adjustment): 1 violation within past 60 months (+ 5%) Total Penalty: \$1,000 x 24 + (24,000 x 0.05) = \$25,200</p>	2416	\$25,200
3	H.E. Hunewill Construction, Lander County	<p><u>NOAV 2424</u> Violation: Failure to comply with a permitted emission limit. VEO was conducted and found the opacity to be 82%. Emission Limit: 20% Opacity Emission Unit : Asphalt Drum Dryer</p> <p>Base Penalty: \$1,000, for Class 2 Minor Source Magnitude (Multiplier): Extremely High Amount (6x) Violation History (Adjustment): N/A Total Penalty: \$1,000 x 6 = \$6,000</p>	2424	\$6,000

In early 2012 the Art Wilson Co. was approached by Superior Soil, a long time customer. They felt there was an opportunity to get lower freight rates, and therefore more gypsum, down to the Hanford, California area if we could load Dry Van Trailers, as they had the equipment necessary in Hanford to offload these trailers.

Superior Soil was not able to guarantee that enough trucking companies would risk their equipment on an unproven loading technique. Because of this, the Art Wilson Co. chose to use our own used equipment to modify and construct a device to load the trailers. There were several changes between what was originally thought out and what was finally constructed.

We were finally ready for testing the equipment in early May.

During this time, the Art Wilson Co. was in the process of renewing its Air Quality Permit. We sent an email to NDEP asking if we could include the Dry Van Loader in the new permit submitted. We did not receive a reply.

After NDEP received our submittal they informed us that we needed to add that unit separately. This was done and we received final approval of the loading facility on July 2, 2012. We were informed at that time that there would be a fine for our using the equipment without final approval. We were never informed of the magnitude of the \$25,200.00 fine, nor how it was calculated.

The new Dry Van Loading system is but one method of loading trucks with our gypsum products that we use at our facility. The method used longest is loading trucks by front end loader (see picture A), which has been in use at the facility since inception and is not a regulated activity.

The second method is loading a truck from our overhead storage facility (see picture B) and is also not regulated.

The third method is that of the Dry Van Loading facility (see 3 pictures, C, D, & E). This is regulated even though this method produces fewer emissions than the previous two.