



Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of June 12, 2013 10:30 AM

Bryan Building Carson City
901 South Stewart Street

Members Present:

E. Jim Gans, Chairman
Pete Anderson
Jim Barbee
Tom Porta
Cary Richardson
Mark Turner
Tony Wasley

Members Absent:

Frances Barron
Alan Coyner
Jason King
Kathryn Landreth

SEC Staff Present:

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

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 (For Discussion): Chairman Gans called for public comment; hearing none he moved to agenda item number 2.

2) Approval of Agenda (Action Item): Chairman Gans was then informed by John Walker there was a change to the agenda. Nevada Division of Environmental Protection Administrator, Dr. Colleen Cripps wanted to present her comments to the Commission before the penalty assessments were heard; item number 6 would be heard after the approval of the agenda.

3) Approval of the minutes for the February 13, 2013 SEC meetings (Action Item): Chairman Gans requested comments from the Commission on the February meeting minutes; hearing none he asked for a motion to approve the minutes. Commissioner Turner moved to approve the minutes and Commissioner Barbee seconded; motion passed unanimously.

6) Administrator's Briefing to the Commission: NDEP Administrator Dr. Colleen Cripps thanked the Committee for allowing her to make her presentation first. Dr. Cripps briefed the Commission on a number of bills that affected NDEP, summarizing each one (**See Attachment I for additional details**). Commissioner Gans expressed concern about SB390 regarding hydraulic fracturing, wondering if it's going to be an issue for Nevada. Dr. Cripps explained that it would all depend on the outcome of the company's exploration tests. NDEP is working closely with the Department of Minerals and she said she would keep the Commission updated on issues associated with "Fracking." It was agreed to include hydraulic fracturing on the agenda for the next Commission

meeting, having both Commissioner Coyner and Commissioner King advise the Commissioners on the development of hydraulic fracturing in Nevada.

Dr. Cripps also briefed the Commission on staff changes, noting that Jasmine Mehta is now the new Bureau Chief for Air Quality Planning. Prior to taking this job, Ms. Mehta was a Deputy Attorney General (AG) for NDEP. Ms. Cripps informed the Commission that NDEP would be conducting interviews to fill the vacant AG position at end of June.

She also said that SEC Executive Secretary John Walker would be retiring from the State Environmental Commission in September, and his replacement would be Valerie King. Ms. Cripps introduced Ms. King to the Commission and Ms. King provided some brief background information about her past and current staff responsibilities at NDEP.

Chairman Gans then acknowledged the work Mr. Walker had accomplished over the years as Commission Secretary. Mr. Walker said that he “staffed” more than 30 SEC regulatory hearings and more than a dozen SEC Appeal hearing. He thanked the Commission and NDEP staff for their support and professionalism.

4) Penalty Assessments for Air Quality Violations - (Action Item):

Mr. Michael Elges, Deputy Administrator for Nevada Division of Environmental Protection, presented the specific violations and recommended penalties for the following three (3) minor source violations and one (1) that is a carryover from the last SEC meeting. (**See Attachment II for additional details**). Chairman Gans asked Mr. Elges what the difference is between minor and major sources. Mr. Elges explained that a major source is over 100 tons of any air regulated pollutant. Anything less than that is considered minor sources. NDEP has permits for approximately 45 major sources and approximate 1,200 minor sources.

A. Harvey’s Resort Hotel Casino – Penalty Assessment for (NOAV) No. 2433-2434 for alleged failure to comply with permitted operating limitation. Failure to conduct required monitoring and record keeping. The Recommended penalty amount is \$3,600.00.

Mr. Elges explained these are minor source violations. The two NOAVs are for operating equipment outside of what the permits allows. NOAV 2433 is for exceeding operating hours and NOAV 2434 is for exceeding fuel consumption. Mr. Elges answered a variety of question from the Commission explaining that this facility uses natural gas and meters to monitor their use and that NDEP has to inspect the major sources once a year and the minor sources are inspected based on their pollution production. Mr. Elges said this facility is a low producer so therefore is only inspected every 3 years.

Chairman Gans asked if there was a representative from the company; Mr. Brad Waldron, Corporate Environmental Manager for Caesars Entertainment - the owners of Harvey and Harrah properties, addressed the Commission. Mr. Waldron explained that it was his understanding his staff had received some bad advice for a consulting firm concerning how the permits must be managed. He noted his staff is now aware of permitting requirements and they are working with NDEP to modify their permit monitoring activities.

Motion: Chairman Gans asked if there were any more questions from the Commission; hearing none he asked for a motion. Commissioner Turner moved for approval of the recommended fine of \$3,600.00 for Air Quality Violation No. 2433-2434. Commissioner Barbee seconded the motion and it passed unanimously.

B. Harrah’s Lake Tahoe Hotel Casino – Penalty Assessment for (NOAV) No. 2432 for alleged failure to comply with permitted operating limitation. The recommended penalty amount is \$10,200.00. Mr. Elges presented the information on the penalty concerning NOV 2432; the penalty

was for exceeding permit allowance. His said the amount of the violation is high because the violation exceeded both daily and annual limits contained in the permit. He said the boiler (permitted unit) didn't have a meter and the permit allowed measurements by people or equipment, however neither was performed.

Commissioner Anderson asked questions regarding the 2010 emission report that looks like they were exceeding their emissions then. He asked why staff was reviewing emission reports without the parameters of the permits. Mr. Elges explained emission reports are reviewed for the purpose of compiling fees and if they see something extreme they'll pull it and send it over to compliance.

However the reports are pulled by compliance when they do an inspection. Chairman Gans questioned why the reports and permits are not being reviewed together. The purpose of these permits is to cut down on pollutions, not allowing a facility to be out of compliance for 3 years. Mr. Elges agreed but pointed out the violation was still caught and the bureau just doesn't have the personnel to dedicate to 1,200 facilities in the time frame they would like. Also the bureau would never renew a permit that was out of compliance. The process the bureau has in place ultimately gets there, he said. Commissioner Porta noted there is a high compliance rate when there are 1200 minor sources, and yet we're here today with only 3 penalties assessments; thus the program is working.

Chairman Gans asked if there was a representative from the company; Mr. Brad Waldron, Corporate Environmental Manager for Caesars Entertainment came forward again and said the corrections have been made and the measuring devices are on order to be placed in the facility. Chairman Gans thanked Mr. Waldron concerning the responsibility the company is now showing to attain permit compliance.

Motion: With no further questions from the Commission, Chairman Gans asked for a motion, where upon Commissioner Porta moved to approve the recommended fine of \$10,200.00 for Air Quality Violation No. 2432. Commissioner Barbee seconded the motion and it passed unanimously.

C. Moltan Company – Penalty Assessment for (NOAV) No. 2409 for the alleged failure to comply with permitted emission limits. The recommended penalty amount is \$10,000.00.

Again Mr. Elges presented the Commission with background information about the penalties assessment and he said this one is also a minor source violation. He said NDEP has been regulating this company for a long time and he said that a test was run and it was discovered that the kiln was exceeding its carbine monoxides limits. Mr. Elges noted the penalty amount reflects the extremely high nature of the exceeded CO limits. Commissioner Richardson questioned the testing and use of a 4X multiplier in the penalty assessment. Mr. Elges explained that the source test was performed by a 3rd party contractor and the results reported to NDEP. The 4x multiplier is the highest magnitude that can be used on the penalty matrix and it was used because of the exceedingly high release of CO.

Chairman Gans asked if there was a representative of the company present; Mr. Robert Followell came forward. Mr. Followell explained that he was the President and owner of Moltan for the last 4 years. The company was sold to EP Minerals, which took over March 1, 2013. Mr. Followell was here to plead for a reduction of the penalty to \$2,500.00. Mr. Followell read an email from a Supervisor, Mr. Cook, explaining the events that took place during the violation. The company was performing routine testing when on the 3rd test of the kiln the high CO was detected. A valve had stuck making the kiln burn rich. On the next test the readings were still high and they turned the plant off to make the repair. The excess was reported to an employee of NDEP that lead them to believe he would file the appropriate paperwork. It wasn't until a later meeting that they realized the paperwork had not been filed and the individual was no longer with NDEP. Mr. Followell went

on to explain that Moltan did everything they thought was right and he thought this was taken care of before the sale of the company.

Chairman Gans thanked Mr. Followell for the information he presented but didn't feel that it changed his mind regarding the penalty. It isn't the Commission's job to sort through the details but to make a decision on the recommended penalty. Mr. Followell said when he called about the letter received January 24, 2013 he was given the impression that this was his chance to present these details. The Commission is being told that Moltan was out of compliance for an extended amount of time and that the equipment wasn't maintained, none of which is true.

Commissioner Turner questioned Mr. Elges on the testing procedures and was informed that multiple tests are conducted, it's a long process. The results are averaged showing the equipment is either in, or out, of compliance. Mr. Elges was also questioned about the permit requirements regarding contacting NDEP and he explained that NDEP must be contacted when there is a violation of the permit. He further said that all of this should have been brought up at the enforcement conference; nevertheless he said the fact is that an infraction did happen.

Again Chairman Gans clarified that the Commission would not debate the details but focus on the infraction. Commissioner Turner asked Mr. Followell if these violations occurred during testing and was told yes, due to an equipment malfunction. Mr. Followell went on to say that he was told there would be an enforcement conference in October but never received notice. Commissioner Richardson wanted to be clear on the fact that an enforcement hearing was held and a representative from Moltan was present. Mr. Followell said that he didn't receive notice or attend. Mr. Elges confirmed there was a conference and a representative from Moltan was there.

Motion: With no further discussion Chairman Gans asked for a motion, where upon Commissioner Anderson made a motion to adjust the penalty from 4 to 1, reducing the fine to \$2,500.00 for Air Quality Violation No. 2409; Commissioner Turner seconded the motion. Commissioner Richardson questioned why. Commissioner Anderson felt there was enough confusion in this matter and the history of the company doesn't justify a factor of four. Chairman Gans asked for a vote and the motion passed with Chairman Gans, Commissioner Porta and Commissioner Wasley voting nay.

D. Western States Gypsum- Penalty Assessment for (NOAV) No. 2416, 2417, 2418 and 2419 for alleged failure to obtain a valid air quality operating permit for a regulated emission unit. The recommended penalty amount is \$25,200.00. This penalty was tabled from the February 13, 2013 meeting so that the appropriate NDEP staff who attended the enforcement meeting could provide testimony to the Commission.

Chairman Gans gave a brief back ground on this penalty assessment. This had been heard at the last meeting where Commissioner Porta made a motion to table the matter so that the appropriate NDEP staff could be present. Commissioner Porta explained that his concern was that the representatives for Western Gypsum were unaware of the penalty amount after the enforcement conference was concluded, and later they were surprised by the amount of the penalty. In fact, they came away from that conference believing they would be paying a lesser fine. Chairman Gans announced that he wanted everyone present to understand that the Commission would not be going over all the details again about this penalty assessment.

Mr. Francisco Vega, supervisor for NDEP's Compliance and Enforcement Branch, explained to the Commission the process that takes place during an enforcement conference. NDEP has a procedure that is used each time. He said the penalty process is discussed and they go through the calculations of the fines during the conference. Commissioner Turner expressed his concern on the due process that took place. Did they leave the enforcement conference understanding the amount of the penalty and forfeited their rights to an appeal? Mr. Vega said they absolutely go through the penalty matrix. Mr. Elges felt there was no infraction of due process, that the

enforcement conference and the right to appeal are separate actions. Commissioner Porta asked Mr. Vega that when NDEP staff and the company representatives are discussing the penalty matrix, is the company given a (dollar amount) range of the penalty. Mr. Vega said absolutely, he felt it was pretty clear what the penalty would be; "they're given a copy of the penalty matrix and can ask any question they need to."

Commissioner Barbee felt this issue has come up before and he wondered if there was a way to document the content of the enforcement conferences. Mr. Elges said that was recommended at the last meeting by Commissioner King and has now been implemented. Commissioner Porta felt that minutes of the conference could be presented to the Commission and would help them and NDEP in the penalty process. Rose Marie Reynolds, Deputy Attorney General for the Commission, recommended the exact amount of the penalty be in the letter sent by NDEP informing them of their right to appeal. SEC Executive Secretary John Walker informed the Commission that NDEP was now doing that.

Commissioner Porta verified with Mr. Vega that it was explained to them that there were two violations at \$1,000.00 for a twelve week period. Mr. Vega confirmed and explained that there was also an added 5% added for a previous violation. Chairman Gans wanted to get things back on track and asked Mr. Art Wilson to the podium.

Mr. Wilson came forward and thanked the Commission and Mr. Vega for the work they do. His main interest was to see if the Commission would be fair and to make sure this doesn't happen to other people. He attended the enforcement conference and listened but the cost was never really discussed. He honestly left that meeting thinking they were looking at 4 to 5 thousand dollars. Commissioner Richardson asked if Mr. Wilson understood the \$1,000.00 base fine times 12 weeks. Mr. Wilson said no, he knew about the \$1,000.00 and figured they deserved that. Chairman Gans brought the Commission back to the point of the fine and violation for them to discuss.

Commissioner Porta stated that although an exact number wasn't given by the Division the path to that number was, which is what they've always done. Does the Commission want to give a discount on the penalty due to that number not being given? Chairman Gans questioned if they need to give Mr. Wilson the right to appeal since he didn't know the fine amount when he waived his appeal. Mr. Elges stated that NDEP could resend and reissue the violation therefore resetting the clock if Mr. Wilson had a desire to appeal. Chairman Gans made it clear to Mr. Wilson that Mr. Elges would not be changing his recommendation just giving him the chance to appeal. Commissioner Porta felt they would just end up here again and would rather change the penalty amount.

Mr. Wilson felt if the Commission would do that he would abide by it. Commissioner Porta asked what if the Commission was to uphold the penalty amount doing a cash payment and a Supplemental Environment Project (SEP). Mr. Elges confirmed that the Division does have an extensive SEP program, where work can be done in lieu of payment.

Chairman Gans presented the different options to Mr. Wilson explaining that the Commission has given him a lot of opportunity. Mr. Wilson agreed and accepted the cash payment with the SEP program.

Motion: Commissioner Porta then made a motion on Air Quality Violation No. 2416 that a cash payment of \$5,000.00 is paid and \$20,000.00 of "in-kind" service be performed by Western Gypsum to be determined by the Division and Mr. Wilson. Commissioner Barbee seconded the motion and it passed unanimously

5) Variance for Alternative Fueled Vehicles - Regional Transportation Commission of Southern Nevada (RTC): (For Possible Action) The Regional Transportation Commission of Southern Nevada (RTC) is requesting a one-year variance from the use of alternative fuel for its diesel fueled and flex-fueled vehicles used in fixed route and Paratransit services.

Ms. Tina Quigley, a General Manager with RTC asked the Commission for a variance to allow RTC to use conventional diesel and gasoline in place of bio-diesel and E-85. Ms. Quigley explained that bio-diesel and E-85 does burn cleaner but is more expensive to buy. They're asking for the variance because it would save RTC roughly \$700,000.00 a year. RTC is not opposed to using these fuels and when the cost for them is lower, they use them. Because of the recession, RTC has had to cut 20% of their routes and are just now starting to add back service to the areas that needed it. Chairman Gans wanted to make sure that if the variance was granted it would not be in violation of Clark County Air ordinances. Ms. Quigley verified that was correct. Commissioner Turner asked about the age of the fleet. Ms. Quigley explained that RTC has one of the newest fleets in the nation and has an aggressive replacement program. Commissioner Turner wanted to point out that a newer vehicle will produce fewer emissions on any fuel.

Chairman Gans asked if NDEP had reviewed the request. Mr. Elges, Deputy Administrator for NDEP informed the Commission that staff had reviewed and supported the variance request. RTC has replaced a number of vehicles and unfortunately the economy doesn't support the higher priced fuels.

Motion: With some discussion, Chairman Gans asked for a motion, where upon Commissioner Barbee moved to grant the variance; Commissioner Turner seconded the motion and it passed unanimously.

6) Public Comment: Chairman Gans asked for any public comments; hearing none he asked when the next SEC meeting would be held. Mr. Walker noted the next meeting will be held October 9, 2013; the location is undecided at this time.

7) Meeting was adjourned at 1:25 pm.

ATTACHMENTS

ATTACHMENT I: NDEP Summary of Legislation from the 2013 Session

ATTACHMENT II: NDEP-BAPC Penalty Recommendations

ATTACHMENT I

Summary of Legislation from the 2013 Session

Bills affecting NDEP

AB346

This bill modifies NRS519 related to pit lakes. If the predicted fill surface of a pit lake is greater than 200 acres when the pit has filled to 90% full, the plan for reclamation must provide, if feasible, at least one point of non-motorized access for the public. The landowner (including the federal government) is not required to allow access or keep the access or pit lake safe or warn of hazardous conditions. If public access to the pit lake is granted, the landowner assumes no liability.

SB65

This is an NDEP bill which adds civil penalties and administrative fines to drinking water enforcement making it consistent with other NDEP programs.

SB123

This bill requires a plan be submitted to the PUC for the retirement or elimination of coal-fired electric generating capacity in Clark County and that the eliminated capacity be replaced with renewable energy facilities under a schedule specified in the bill. Most of the bill addresses how the PUC will administer the conversion of coal-fired generation to renewable energy; however, the bill does specify that remediation and reuse of coal-fired generation sites is under the jurisdiction of NDEP.

SB148

This bill changes the distribution of funds in the DMV Pollution Control Account, eliminating the grant program for remaining funds in excess of \$1,000,000 and replacing it with the same distribution to local governments that is used for the funds less than \$1,000,000.

SB229

This bill repeals SB271 from the 2011 Legislature which would have allowed Nevada to leave the TRPA in 2015. If the State of California does not enact such legislation on or before January 1, 2014, the provisions of this bill expire and SB271 remains in effect.

SB390

This bill requires that Division of Minerals and the NDEP jointly develop a program to assess the effects of hydraulic fracturing on the waters of the state. The bill also requires that the chemicals used in hydraulic fracturing be disclosed and that the public is notified of activities related to hydraulic fracturing.

SB449

This bill increases the period from 2 years to 4 years the period during which a third or subsequent offense involving the illegal disposal of any cesspool or septic tank effluent or solid waste subjects the offender to a gross misdemeanor and imprisonment in the county jail for 1 year.

SB399

This bill takes the definition of biodiesel out of regulation and puts it into statute. This bill might present a problem for NDEP because our program currently allows B5 biodiesel. The current NAC 590.051/ASTM D7467 definition states that biodiesel must be B6 to B20, but the bill eliminates the ASTM D7467 definition of B6 to B20. The bill seems to force the Dept. of Ag to adopt regulations for GDiesel fuel; a fuel which we allow fleets to use under the NAC 486A program. This may be problematic for Dept. of Ag because GDiesel really is not biodiesel, but is also not regular diesel – it may be illegal to sell GDiesel if it can't be defined.

Bills affecting the SEC

AB65

This bill disallows a member of a public body from designating another person in their place unless the legal authority that created the public body expressly allows it and the designation is made in writing or made on the record at meeting of the public body. This bill also requires, if a public body member is present by teleconference or videoconference, all members of the public body and members of the public that are present must be able to hear or see and participate.

AB252

This bill makes revisions to the Administrative Procedures Act (NRS 233B). It is now required that a regulation must be adopted within 2 years after submittal to LCB. If the regulation is not adopted within 2 years, the agency head must personally appear before the Legislative Commission to explain. The informational statement must include an explanation of the need for the regulation. This bill broadens the authority of the Legislative Commission by removing language that the Commission determines if a regulation conforms to statutory authority and intent of the legislation to now state the Commission approves a regulation. The Legislative Commission can object to regulation because the explanation of need is not satisfactory or insufficient. Lastly, this bill is retroactive.

AB408

This bill also modifies NRS233B and requires agencies to conduct analysis of likely impact of proposed regulation on small business when proposing regulations. The bill further specifies that this analysis must be conducted by agency staff that is most knowledgeable, as practicable. The small business impact statement is now required 15 days prior to the public workshop and must accompany the workshop notice and agenda. The statement must include the manner of analysis and reasons for conclusions. Similar to AB252, the Legislative Commission may object to regulation if small business statement is incomplete, inaccurate or did not adequately consider impact.

ATTACHMENT II

NDEP-BAPC Penalty Recommendations

NDEP-BAPC PENALTY RECOMMENDATIONS - June 30, 2013

TAB NO.	COMPANY NAME	VIOLATION & PENALTY SUMMARY	NOAV NUMBER	RECOMMENDED PENALTY
1	Harvey's Resort Hotel Casino, Douglas County	<p><u>NOAV 2433</u> Violation: Failure to comply with permitted operating limitation Requirement: Annual limit on hours of operation Emission Unit : Boiler</p> <p>Base Penalty: \$600, for Class 2 Minor Source Magnitude (Multiplier): 3 Systems Violation History (Adjustment): N/A Total Penalty: \$600 x 3 = \$1,800</p> <p><u>NOAV 2434</u> Violation: Failure to install conduct required monitoring and recordkeeping Requirement: Monitor fuel consumption rate Emission Unit : Boiler</p> <p>Base Penalty: \$600, for Class 2 Minor Source Magnitude (Multiplier): 3 years Violation History (Adjustment): N/A Total Penalty: \$600 x 3 = \$1,800</p>	2433 and 2434	\$3,600
2	Harrah's Lake Tahoe Hotel Casino, Douglas County	<p><u>NOAV 2432</u> Violation: Failure to comply with permitted operating limitation Requirement: Daily and annual limit on hours of operation Emission Unit : Boiler</p> <p>Base Penalty: \$600, for Class 2 Minor Source Magnitude (Multiplier): 3 units for 1 year and 14 days Violation History (Adjustment): N/A Total Penalty (Annual): \$600 x 3 = \$1,800 Total Penalty (Daily): \$600 x 14 = \$8,400</p>	2432	\$10,200
3	Moltan Company, Churchill County	<p><u>NOAV 2409</u> Violation: Failure to comply with a permitted emission limit Emission Limit: 2.96 lbs/hr CO Emission Unit : Kiln</p> <p>Base Penalty: \$2,500, for Class 2 Minor Source Magnitude (Multiplier): Extremely High Amount (4x) Violation History (Adjustment): N/A Total Penalty: \$2,500 x 4 = \$10,000</p>	2409	\$10,000