



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 March 21, 2024, 9:00 AM

Bryan Building, Bonnie B. Bryan Room, 1st Floor,
901 South Stewart Street
Carson City, NV

Video Conference
375 East Warm Springs Rd., Ste. 200
Las Vegas, NV

Commissioners Present:

Tom Porta, Chairman*
Jason King, Vice Chairman
Kacey KC
Kathryn Landreth*
J.J. Goicoechea
Tom Smith*
Adam Sullivan
Rob Ghiglieri
Tina Mudd
Fred Reeder
*participated remotely

Commissioners Absent:

Alan Jenne

SEC Staff Present:

Ziwei Zheng, SEC/DAG
Sheryl Fontaine, Executive Secretary
Loren Borst, Recording Secretary

Members of the Public Present:

Lawrence Bazel

BEGIN SUMMARY MINUTES

1) Call to order, Roll Call, Establish Quorum: (Discussion) The meeting was called to order at 9:00 am by Vice Chairman Jason King. Sheryl Fontaine, the Executive Secretary, confirmed that the hearing was properly noticed and that a quorum was present. She reviewed housekeeping rules for the meeting. Vice Chairman King confirmed that none of the Commissioners had had any contact with any of the facilities on the agenda.

2) Public Comment: (Discussion) Vice Chairman King called for public comment on non-agendized items. There were no public comments.

3) Approval of the minutes for the December 5, 2023, SEC meetings: (Action Item) Vice Chairman King requested comments from the Commission regarding the December meeting

minutes. Chairman Porta had some questions and corrections to the minutes. Ms. Fontaine read and noted the corrections and indicated that those corrections would be made. Vice Chairman King asked for any additional changes to the minutes. Hearing none, Vice Chairman King asked for a motion.

Motion: Commissioner Goicoechea moved to approve the minutes and Commissioner Mudd seconded. The minutes were unanimously approved.

4) Wulfenstein Construction Company, LLC - NOAV No. 3071: (For Possible Action) Andrew Tucker, Chief of the Bureau of Air Quality Planning (BAQP) introduced the penalty and the criteria for determining notices of violation, and noted the addition of a color-coded penalty matrix as a visual aid for the Commission. He introduced Michelle Grover, Supervisor of the Enforcement branch to present the penalty to the Commission.

Ms. Grover explained that Wulfenstein holds multiple air quality permits with the Division and that this penalty is related to their Class II permit for the Gamebird Pit, in Nye County, which was last issued in May 2019. This facility includes a crushing plant, a concrete aggregate screening plant, and a hot mix asphalt plant. At the time of the last inspection, on April 19, 2023, only the crushing and screening plants were in operation. During that inspection, inspectors observed that the controls required to minimize emissions were not operating at systems three through seven. Opacity controls were also missing, implying that particulate matter emissions were likely exceeding permitted limits. Ms. Grover discussed the breakdown of the fine using the penalty matrix, highlighting the type of violation for each emission unit. For Class II permits, the base penalty is \$1,000/emission unit/day. Because Wulfenstein corrected the problem the day after it was identified by Division staff, only one day of violation was used in the penalty calculation. For eight emissions units, at \$1,000 per unit, the resulting penalty is \$8,000. Ms. Grover also noted that Wulfenstein was back in compliance, has had no violations during the past five years at this facility, and that there were no other mitigating factors to consider in the penalty calculation.

There were no questions or comments from the Commissioners, the facility, or the public. Vice Chairman King called for a motion to approve the penalty for Notice of Violation 3071 to include reference to the Findings of Fact and Conclusions of Law provided by the Division.

Motion: Commissioner Sullivan moved to approve NOAV No. 3071, referencing the Findings of Fact and Conclusions of Law provided by the Division. Commissioner KC seconded the motion and it passed unanimously.

5) Cyanco Company, LLC - NOAV No. 3056: (For Possible Action) Ms. Grover informed the Commission that Cyanco holds a Class I air quality permit, last issued in October 2023, for their sodium cyanide manufacturing plant, located in Humboldt County, near Winnemucca, Nevada. The facility includes two aqueous sodium cyanide plants and one solid sodium cyanide plant. Annual stack testing is required for hydrogen cyanide, which is considered a Hazardous Air Pollutant (HAP) by the EPA. The test conducted in August 2021 showed an exceedance of their permitted limit and a required retest was not conducted within 45 days of the failed test.

Ms. Grover explained the penalty calculation. The Class I permit base penalty for a failed source test for HAPs is \$4,000. To calculate the penalty, this base amount is multiplied by the excess emissions ratio (measured emissions divided by the permitted emission limit); in this case, $0.085/0.050 = 1.7$. Ms. Grover also noted that, because cyanide compounds are considered HAPs, there is a Toxicity of Release component which adds a x2 multiplier to the penalty. Ms. Grover noted that Cyanco has had no previous violations in the past five years at this facility, there were no additional mitigating factors to consider, and the facility was back in compliance with regards to their source tests. Ms. Grover stated that, based on the penalty matrix, the total fine is \$13,600.

Vice Chairman King asked for any questions from the Commission. Commissioners Mudd and Goicoechea asked for clarification on the 45-day requirement to retest and the length of time the facility took to retest. Ms. Grover verified the 45-day retest requirement and that the facility did not retest until the next annual test the following year. Commissioner Landreth asked why it took three years for the violation to be brought to the Commission. Ms. Grover explained that lack of staffing and turnover in the Division was the primary cause for the delay. Vice Chairman King, seeing no other questions, asked for any comment from the facility. Seeing none, he opened for public comment. There were no comments from the public. Vice Chairman King called for a motion.

Motion: Commissioner Goicoechea moved to accept the Findings of Fact and Conclusions of Law for NOAV No. 3056. Commissioner KC seconded. The motion passed unanimously.

6) Regulatory Petition - LCB File No R113-22 - Bureau of Water Quality Planning: (For Possible Action) Jason Kuchnicki, the Bureau Chief of the Bureau of Water Quality Planning (BWQP) introduced the antidegradation regulation and recognized Zachary Blumberg, also a part of the BWQP, and Andrew Dixon, the Chief of the Bureau of Water Pollution Control (BWPC). Mr. Kuchnicki gave an introduction of the Clean Water Act and how it informs the NDEP water bureaus' functions and actions, and provided the background and history of the need for the antidegradation regulation in Nevada. Mr. Kuchnicki said that Zack Blumberg would discuss the regulation itself, including key definitions and a description of the different tiers of antidegradation. He emphasized that antidegradation is implemented through the permitting process and explained that Andrew Dixon would provide an overview of the antidegradation review process and how permitting would proceed under this new regulation.

Mr. Kuchnicki discussed the Clean Water Act and its role in NDEP operations. He explained that BWQP implements the Clean Water Act by proposing water quality standards for surface waters throughout the state and monitoring those waters to ensure that the standards are being met, and that BWPC regulates discharges to the surface waters of the state. He outlined three core components of water quality standards in assuring that water quality is protected: designation of beneficial uses, developing criteria to protect waters for those uses, and antidegradation requirements to protect waters with high water quality. Mr. Kuchnicki provided further details on each component. He explained that Nevada's current water pollution control law doesn't meet the federal requirements and that approving this regulatory petition is necessary to comply with federal regulations. Mr. Kuchnicki noted that this regulation has been through many iterations over the past several years, with significant changes resulting in resubmission to the Legislative Counsel Bureau in December 2023. Multiple workshops were held in 2021 and 2022, providing stakeholders and the public the opportunity to provide input. After the most recent revisions, another public workshop was held in January 2024. He explained that the primary difference between the 2023 version and the new version is the removal of the public's ability to nominate waters to be designated for beneficial use as "extraordinary, aesthetic, ecological or recreational value." Mr. Kuchnicki emphasized that, in the current version, the Commission retains the authority to designate the beneficial use of extraordinary, aesthetic, ecological, and recreational bodies. He added that this current regulation includes specific processes to both assess a baseline water quality that is better than existing water quality standards and to establish an interim standard while the baseline water quality assessment is being conducted.

Mr. Zach Blumberg, the Special Projects Coordinator for the BWQP, presented additional information about the regulation, providing definitions for several key terms and phrases used throughout the regulation, including "Parameter of Concern," "Baseline Water Quality," "Interim Baseline Value (IBV)," "Effluent Dominated Water," and "Requirement to Maintain Existing Higher Water Quality (RMHQ)." He explained that while RMHQs are included in Nevada's water quality standards table, they have never been included in Nevada Administrative Code except within the

Water Quality Standards Planning Document. He explained that the antidegradation regulation would be implemented during the point source discharge permitting process, administered by the BWPC. The antidegradation regulation adopts a tiered structure as required by the federal antidegradation regulations. Mr. Blumberg described the tiered system included in the regulation, with Tier 1 being the minimum level of antidegradation protection and Tiers 2, 2.5, and 3 each adding more stringent antidegradation protections. He also explained that the designation of “Waters of Extraordinary Ecological or Aesthetic Value” has been updated in the current version of the regulation to “Waters of Extraordinary Ecological, Aesthetic, or Recreational Value” for better consistency with federal antidegradation regulations. Mr. Blumberg reiterated that Nevada’s antidegradation regulation applies only to surface waters and is implemented through the storm water runoff permitting process, and introduced Andrew Dixon, chief of the BWPC to elaborate.

Mr. Dixon outlined the antidegradation review portion of the permitting process. For Tier 1 and 2 waters, for new or expanded discharges or zones of mixing, the process will start by determining the parameters of concern using the application, any existing data for similar facilities, and EPA guidance. If there is sufficient data to establish baseline values, NDEP will continue the permitting process. If there is not sufficient data to establish baseline values, the permittee must submit a sampling and analysis plan for approval by NDEP to establish a baseline water quality by collecting and analyzing 20 samples collected quarterly over five years. After two years, NDEP may establish interim baseline values for each parameter based on eight quarterly samples to allow the permitting process to move forward timely. He noted if the proposed discharge is equal to or better than the baseline or established interim baseline values, no further analysis would be needed, and the permit can be issued. If a parameter exceeds the standard, the permittee must submit an analysis of alternatives. If no feasible alternative is identified, the regulation does allow for exceptions due to economic hardship. For Tier 2.5 and Tier 3 waters (and only for new or expanded discharges or zones of mixing), the process is the same, except that an interim baseline value will not be established for these waters.

Mr. Kuchnicki summarized comments received from stakeholders and the public throughout the amendment process and the bureau’s responses to those comments, emphasizing that most of the comments received pertained to the timing and implementation of the regulation rather than the actual regulatory language; therefore, no changes were made to the regulation as a result of comments received.

Commissioner Mudd asked several questions related to implementation, including clarification on applicability and the permitting process. Vice Chairman King and Commissioner Goicoechea had follow-up questions. These questions and related answers were discussed between NDEP BWQP and BWPC staff and the Commissioners. Chairman Porta recognized Division staff for the work dedicated to this regulatory amendment over the past several years, adding that Nevada was one of the first states to adopt numeric water quality standards. He asked how many other states have similar regulations in place and Mr. Kuchnicki responded that Nevada is the only state that has not yet adopted antidegradation regulations. Several Commissioner had additional questions relating to online resources for applicants, Departmental versus Divisional authority, financial responsibility for sampling, alignment with California regulations for the Lake Tahoe basin, and the criteria for the “extraordinary” designation. NDEP staff answered the questions and there was some discussion for each. Vice Chairman King called for public comment.

Lawrence Bazel, counsel for the Clark County Regional Flood Control District, commended NDEP for working with stakeholders when modifying the original antidegradation regulation. Commissioner Landreth also thanked Division staff for their work on these regulations and asked about the removal of the public nomination process, and whether the public can still petition the Commission to designate a water body as “extraordinary.” Mr. Blumberg confirmed. There were no other public comments. Vice Chairman King asked for a motion.

Motion: Commissioner Landreth moved to adopt regulation R113-22. Commissioner Sullivan seconded the motion, and it passed unanimously.

7) Administrator’s Briefing to the Commission: (Discussion) Ms. Jennifer Carr, Administrator of NDEP briefed the Commission on a 3-million-dollar grant NDEP received last year from the EPA under the Climate Pollution Reduction Grant to develop a Priority Climate Action Plan (PCAP) to address greenhouse gas emissions and reduction strategies. This will open the door for NDEP to apply for a share of 4.6 billion federal dollars to address the priorities identified in the PCAP.

Commissioner Mudd asked what kind of projects would be funded by the grant. Deputy Administrator Danilo Dragoni explained that a majority of the projects will focus on the transportation sector. Ms. Carr added that Clark County is proposing a grant application for approximately \$500 million to develop a one stop shop of resources and contractors for residential homeowner efficiency and energy reduction projects.

Commissioner Sullivan asked whether the grant process was competitive. Ms. Carr responded that the initial grant award for planning was non-competitive; however, the project funding (4.6 billion dollars) is competitive nationally. Commissioner Ghiglieri asked if it is a one-time allocation. Ms. Carr said it was an infusion of funds from the Inflation Reduction Act.

Ms. Carr introduced Sheryl Fontaine, Executive Secretary and Chief of the Bureau of Administrative Services, to speak on the other item on the Administrator’s briefing. Ms. Fontaine announced that the SEC was able to purchase iPads for each Commissioner to eliminate the need to distribute paper binders for each meeting. Binders will still be available for Commissioners if requested. Ms. Fontaine provided some tentative information about the next scheduled meeting in June.

Vice Chairman King asked Ms. Carr for an update on Division staffing levels. Ms. Carr provided the information, emphasizing that engineering positions are the most difficult to fill.

8) Public Comment: (Discussion) Vice Chairman King asked for public comment. There was none.

9) Adjournment: (Discussion) Vice Chairman King asked for a motion to adjourn.

Motion: Commissioner Goicoechea moved to adjourn. Commissioner Mudd seconded the motion. Meeting was adjourned at 10:45 am.

The audio recording of this meeting is available at https://sec.nv.gov/uploads/mtg_0324/Meeting-032124.mp3.