





NEVADA STATE ENVIRONMENTAL COMMISSION

SEC Regulatory Meeting

 TIME	 LOCATION
June 9, 2021 10:00 a.m.	Richard H. Bryan Building 901 S. Stewart St. Carson City, NV

SEC members present:

Chairman Tom Porta

Vice Chair Jason King

Commissioner Michael Visher

Commissioner Tony Wasley

Commissioner Adam Sullivan

Commissioner Kathryn Landreth

Commissioner Jocelyn Torres

Commissioner Mark Turner

SEC members absent:

Commissioner Kacey KC

Commissioner Jennifer Ott

SEC staff present:

Valerie King, executive secretary

Danyel Soulier, recording secretary

Nevada Attorney General's Office staff present:

Ian Carr

Nevada Division of Environmental Protection staff present:

Greg Lovato

Stephanie Simpson

Danilo Dragoni

Andrew Tucker

David Dragon

Matthew McDaniel

Public present:

Kamren Garfield

Larry Lu

Chris Lynch

In these minutes:

- [Call to order, roll call, establish quorum](#)
 - [Public comments](#)
 - [Approval of Dec. 9, 2020 meeting minutes](#)
 - [W.W. Clyde Companies — NOAV Nos. 2794 & 2797](#)
 - [Lin Cubing Inc - NOAV Nos. 2768 & 2771](#)
 - [Administrator's briefing to the commission](#)
 - [Public comments](#)
-

Begin Summary Minutes

1) **Call to order, roll call, establish quorum** (Discussion)

The meeting was called to order at 10:00 a.m. by Chairman Tom Porta. Valerie King confirmed the hearing was properly noticed and that a quorum was present.

Chairman Porta began by recognizing the newest member of the commission, Jocelyn Torres. Commissioner Torres stated she was honored to be on the commission.

Chairman Porta then recognized Valerie King, noting that the meeting would be her last before she retired. He thanked her for her time on the commission and her outstanding service. Greg Lovato then presented Ms. King with a plaque.

Ms. King stated it was an honor and a privilege to serve on the commission.

2) **Public comments**

Chairman Tom Porta asked if there were any comments from the public. There were none.

3) **Approval of Dec. 9, 2020 meeting minutes** (Action item)

Motion: Commissioner Mark Turner moved to approve the minutes. Commissioner Michael Visher seconded the motion, and it passed unanimously.

Air Penalties

4) W.W. Clyde Companies — NOAV Nos. 2794 & 2797 (Action item)

Danilo Dragoni, Chief of the Bureau of Air Quality planning, presented to the commission. He also introduced Andrew Tucker, Supervisor of the Enforcement Branch, and David Dragon, Enforcement Officer, would also be presenting. Mr. Dragoni then gave an overview of the two violations.

Violations: NOAV Nos. 2794 and 2797, failure to conduct required testing and for exceeding throughput limits. The recommended penalties are \$10,000 and \$4,200, respectively.

Mr. Tucker began by explaining permitting terms in the presentation. He stated Class II permit is issued to facilities that are considered minor sources of regulated pollutants. He added that a general permit allows a company to operate equipment at one or more locations by obtaining a Change of Location Approval (COLA).

Mr. Tucker stated W.W. Clyde operates a temporary aggregate processing and asphalt manufacturing facility east of Wells, Nevada – off Interstate 80. Mr. Tucker noted the facility was issued the Notices of Alleged Violations (NOAV) after an NDEP inspection on August 13, 2019. He added that two additional NOAVs were issued for failure to report startup.

Mr. Tucker stated NDEP held an enforcement conference with W.W. Clyde to give the facility the opportunity to contest the NOAVs. NDEP determined the facility did not have evidence to dispute the violations, and the final NOAVs were issued March 31, 2021.

Mr. Tucker then gave more details on NOAV No. 2794. He stated W.W. Clyde did not conduct initial opacity compliance demonstrations within 15 days of starting up equipment at the facility. These demonstrations ensure control devices at the facility are working, and that emissions do not exceed permit limits. Mr. Tucker stated W.W. Clyde did not complete any opacity demonstrations since it began operations in June 2019 and ceased operations a year later.

Mr. Dragon noted that since May 4, 2021, W.W. Clyde has complied with its permit for one of its systems.

Mr. Dragon then explained the penalty assessment. He stated the penalty for this violation was \$200 a month for each system that failed to undergo testing (for a maximum of \$2,000 per system). As there were five systems out of compliance for 10 months, the gravity fine equaled \$10,000.

Commissioner Michael Visher asked how much time had lapsed between when the inspection was conducted and when NDEP became aware of the issue.

Mr. Tucker answered that the inspector who conducted the inspection was not the typical inspector for facilities in the county. He added that NDEP expects to see documentation for the opacity demonstrations shortly after startup at a facility. He noted the lack of documentation should have prompted a closer look. Mr. Tucker acknowledged that a significant amount of time had passed after the inspection before the issue was addressed.

Commissioner Visher then asked when W.W. Clyde was notified about the violations. Mr. Tucker answered that the draft NOAVs were a formal notice, but that the facility had been informed verbally before then.

Commissioner Visher asked if W.W. Clyde was able to show cause for why the demonstrations were not conducted. Mr. Tucker answered that the facility did not contest the violations.

Commissioner Visher then asked if W.W. Clyde had done business in Nevada before. Mr. Tucker answered that the company had applied for a COLA in the past 10 years, but that the company primarily does business outside of Nevada.

Mr. Tucker then gave more details on NOAV No. 2797. He explained that NDEP received a report from W.W. Clyde on July 2, 2020 that showed the facility exceeded the throughput limits of its COLA. NDEP determined that the facility exceeded its material processing limits by anywhere from 13,000 to 100,000 tons.

Commissioner Visher asked what the NOAV meant when it stated W.W. Clyde oversimplified its reporting. Mr. Tucker answered that material going through screening equipment continues to different locations in the facility. W.W. Clyde only reported the total amount of material screened, which does not accurately calculate emissions.

Mr. Dragon stated that W.W. Clyde's current compliance status is unknown, as the facility has not been required to report material processing totals since the violations were discovered.

Mr. Dragon then explained the penalty assessment. He stated the fine for exceeding permitting parameters is \$600. Since there were seven emission units out of compliance, the total gravity fine equaled \$4,200.

Mr. Danilo explained that initial testing and throughput limits are important measures in preventing air quality pollution.

Vice Chair Jason King asked if representatives from W.W. Clyde wished to speak.

Kamren Garfield, an employee of W.W. Clyde, stated the company takes the violations seriously. He noted there was no record of the opacity demonstrations being conducted. He added that W.W. Clyde has made personnel changes and implemented a notifier system to help comply with state and federal requirements. Mr. Garfield added that more internal meetings and implementing production tracking would prevent exceeding

throughput limits in the future. Lastly, Mr. Garfield stated W.W. Clyde has improved its recording keeping and staff training.

Chair Tom Porta asked if W.W. Clyde would train staff to become certified in visible emission rating. Mr. Garfield answered that the company was looking to train staff in Southern Nevada.

Chair Porta then asked for public comment. There was none.

Motion: Vice Chair King moved to approve NDEP recommended penalties for W.W. Clyde in the amount of \$10,000 for NOAV 2794 and \$4,200 for NOAV 2797, for a total penalty of \$14,200. Commissioner Turner seconded the motion, and it passed unanimously.

5) **Lin Cubing Inc. – NOAV Nos. 2768 & 2771 (Action item)**

Danilo Dragoni gave an overview of the two violations.

Violations: NOAV Nos. 2768 and 2771, for failure to conduct a capacity test and operating without a valid air quality permit. The recommended penalties are for \$4,000 and \$15,000, respectively.

Andrew Tucker gave more details on the violations. He stated Lin Cubing, which compacts bales of hay into feed cubes, operated in Fernley, Nevada under a Class III Air Quality Operating Permit that expired Dec. 1, 2019. The facility was issued a Class II permit June 26, 2020.

Mr. Tucker stated the draft NOAVs were issued after a site visit on May 31, 2019 and a subsequent inspection on Dec. 16, 2019. An enforcement conference was held to give Lin Cubing an opportunity to contest the NOAVs. Mr. Tucker stated Lin Cubing did not have evidence to dispute the violations. The final NOAVs were issued Feb. 20 and 24, 2021.

Mr. Tucker added that Lin Cubing has also been issued three additional NOAVs for recordkeeping violations, as well as a warning for a major violation.

Mr. Tucker explained that during the site visit to the facility, NDEP inspectors noted emission opacity was 43 percent. The permit for the facility did not allow opacity to exceed 20 percent. Mr. Tucker noted that particulates that create higher levels of opacity can cause adverse health effect.

David Dragon stated that Lin Cubing has not had any additional opacity violations since the NOAVs were issued.

Mr. Dragon then explained the penalty assessment for NOAV No. 2768. He stated the base penalty is \$1,000. There is also a modifier of 4, as the facility exceeded its opacity limit by 40 percent. The total fine would then equal \$4,000.

Mr. Tucker then gave more details on NOAV No. 2771. He explained that NDEP sent three letters to Lin Cubing, informing the facility that its Class III permit was expiring on Dec. 1, 2019. NDEP staff then conducted an inspection at the facility on Dec. 16, 2019. Staff noticed equipment at the facility had been recently used. Lin Cubing was unable to provide records during the inspection.

Mr. Tucker stated Lin Cubing applied for a Class II permit in February 2020. The facility was allowed to resume operations on May 25, 2020. Mr. Tucker explained that NDEP staff observed emissions coming from the facility in February and March 2020. Mr. Tucker added that during enforcement conferences, Lin Cubing was unable to provide evidence that it did not operate before being permitted to do so.

Mr. Dragon stated that Lin Cubing returned to compliance after the facility was issued a Class II permit on June 26, 2020.

Mr. Dragon then explained the penalty assessment for NOAV No. 2771. The base penalty for operating without a permit is \$3,000. There is also a modifier of 5, as the facility operated for five months without a permit. The total fine would then equal \$15,000.

Mr. Dragoni stated that it is important for a facility to operate with a valid permit. He noted that the permit can change as conditions at or around the facility change. He stated that permit renewal is crucial for managing air quality.

Commissioner Kathryn Landreth asked if the burden of proof to demonstrate compliance was on the permittee.

Mr. Tucker answered that records help demonstrate operation and non-operation. He stated Lin Cubing did not have adequate records to show it did not operate without a permit.

Chair Porta noted the facility reapplied for a Class II permit. He asked if the facility should have been classified as a Class II source for the entire time it was in operation.

Mr. Tucker explained that NDEP had ended its Class III permitting program. NDEP then determined a threshold for facilities to either become Class II sources or non-permitted sources. Mr. Tucker stated Lin Cubing met the threshold for a Class II permit.

Chair Porta asked if that meant Lin Cubing should have begun operation as a Class II source.

Mr. Dragoni answered that sources that were previously classified as Class III and Class IV had low emissions. He explained that these sources, while still having to follow federal regulations, did not require a permit. Mr. Dragoni stated that Class III sources that met a determined threshold were grandfathered into the Class II program, to give the facilities time to comply with the new regulations.

Vice Chair Jason King asked how much a Class II permit costs. Mr. Dragoni answered that the application fee varies depending on the size of the facility.

Chair Porta then asked if the costs to operate under a Class II rather than a Class III permit were more expensive.

Mr. Tucker answered that the costs were similar. He stated that NDEP does not mandate what controls a facility uses to mitigate emissions – unless there are federal requirements.

Chair Porta then asked for comment from Lin Cubing.

Larry Lu, CEO of Lin Cubing, stated he took over the company in 2017 and had no record of a permit requirement. Mr. Lu added that the facility shut down production when the NOAV was issued.

Chair Porta asked for comments from the commission. There were none.

Motion: Vice Chair King moved to approve NDEP recommended penalties for Lin Cubing in the amount of \$4,000 for NOAV 2768 and \$15,000 for NOAV 2771, for a total penalty of \$19,000. Commissioner Landreth seconded the motion, and it passed unanimously.

6) Nevada Business Environmental Program presentation (Discussion)

Chair Tom Porta stated that with several new people on the commission, Commissioner Mark Turner had recommended that commissioners were introduced to the University of Nevada, Reno's Business Environmental Program.

Chair Porta added that NDEP has several programs that do not come before the commission, but still assist the regulated community. He noted that the meeting was an opportunity for commissioners to learn about a program that assists businesses with navigating environmental statutes and regulations.

Chris Lynch, who works with the program, stated their work with NDEP began in 1988 to assist the regulated community with energy efficiency and environmental compliance. Mr. Lynch added the program is free to Nevada businesses.

Mr. Lynch stated the program works with new and growing businesses, hosting workshops and trainings to make sure facilities are permitted and in compliance. He added that the program also recommends ways for businesses to reduce their environmental footprint and bring down energy costs.

Mr. Lynch stated the Nevada Business Environmental Program works closely with other agencies to ensure businesses are meeting requirements at the local, state, and federal levels.

Commissioner Michael Visher asked how many staff are in the program. Mr. Lynch answered the program had three-and-a-half full-time staff. He added that the program was unique to Nevada.

Commissioner Landreth asked how the program was funded. Mr. Lynch answered that the core funding comes from NDEP.

Chair Porta asked if the program had discussed the issue of buffer zones to mitigate issues with city planning. Mr. Lynch replied that the program had not discussed the issue with local officials.

Commissioner Mark Turner added that the program can help business from facing penalties or fines for non-compliance.

7) **Administrator's briefing to the commission** (Discussion)

NDEP Administrator Greg Lovato addressed the commission. He stated his briefing would cover three main points:

1. Personnel changes
2. Legislation impacting NDEP
3. Thacker Pass lithium mine

Mr. Lovato stated Valerie King was retiring as executive secretary of the SEC, as well as Chief of the Bureau of Administrative Services. Mr. Lovato added that Lisa Kremer, Chief of the Bureau of Air Pollution Control, was also recently retired.

Mr. Lovato then gave an overview of five legislative bills impacting NDEP:

1. AB 97

Mr. Lovato stated AB 97 deals with per- and polyfluoroalkyl substances (PFAS) used in products like firefighting foam. Mr. Lovato explained that PFAS chemicals do not break down and have a low threshold for causing health impacts.

AB 97 requires NDEP to create a workgroup to look into drinking water standards for PFAS chemicals.

Chair Porta asked if businesses in Nevada used PFAS chemicals. Mr. Lovato answered that they are in most consumer products, but contamination has not been as much of an issue in Nevada due to less manufacturing. He also stated

that NDEP works with local municipalities to develop source water protection programs.

Mr. Lovato added that recommendations from the PFAS workgroup are expected in February 2022.

2. AB 146

Mr. Lovato stated that this bill encourages NDEP to decrease pollution from diffuse sources. This includes following regulations adopted by the commission, updating best management practices, or applying for federal grants.

3. AB 148

Mr. Lovato stated that this bill is known as the Mining Bad Actor Bill. The bill would direct NDEP to avoid granting permits to persons or companies that have a history of non-compliance in other states. Mr. Lovato stated workgroups will be established in August 2021 to discuss the bill.

Chair Porta asked if the legislation was specific to NDEP's mining program. Mr. Lovato answered that it was. He added that NDEP will have to develop a procedure to make this change to the permitting process legally defensible.

4. AB 349

Mr. Lovato stated this bill would close the so-called classic car loophole. He explained that this legislation would require drivers to have specific insurance to register their classic cars. This would prevent drivers with older vehicles from taking advantage of smog test exemptions intended for classic cars.

5. AB 452

Mr. Lovato stated this bill was brought to the legislature by NDEP. He explained that a 2019 bill required NDEP to update its greenhouse gas inventory every year, as well as make policy suggestions for the State that would reduce emissions. Mr. Lovato stated this bill would use monies from the petroleum fund fee to hire additional staff to assist with these new reporting requirements.

Mr. Lovato added that NDEP is tracking growing emissions from the transportation sector, as well as impacts from ozone-depleting substance substitutes. He stated that regulations may be brought to the commission to improve reporting on these emission sources.

5. AB 253

Mr. Lovato stated this bill would update open meeting law requirements to allow government boards and commissions to hold meetings virtually.

Mr. Lovato then gave an update on the Thacker Pass lithium mine. The proposed mine would operate on federal land north of Winnemucca. Mr. Lovato noted the Bureau of

Land Management (BLM) approved the mine in January. The mine still needs to obtain permits from NDEP.

Mr. Lovato explained that NDEP has received many questions and concerns about the mine. He added that NDEP has reached out stakeholders via webinars and in-person meetings to address questions about the mining and permitting process. Mr. Lovato noted that NDEP would also be meeting with tribal members in the area to discuss the mine.

Chair Porta asked if the mine was on BLM land, and if the BLM had completed its Environmental Impact Statement (EIS). Mr. Lovato confirmed the proposed mine would be on BLM land, and added that with lithium being considered a critical resource by the federal government, the timeline for the EIS was much stricter. Mr. Lovato noted that the BLM was facing lawsuits regarding its decision.

Mr. Lovato stated that a public hearing would be planned after a decision is made on the mining permits.

Chair Porta asked if the mine would be in Humboldt County. Mr. Lovato answered that it would be.

8) Public comments

Chair Tom Porta asked if there were any public comments. A caller asked who the plaque was presented to at the beginning of the meeting. Valerie King confirmed the plaque was presented to her.

Ms. King then informed the commission that Stephanie Simpson would be acting executive secretary. Ms. King also introduced Danyel Soulier as the recording secretary.

Commissioner Tony Wasley stated that as the director of the Nevada Department of Wildlife (NDOW), he wanted to comment on the Thacker Pass lithium mine. Commissioner Wasley stated that NDOW had concerns that the mine would dewater streams in the lower elevations. He added that noise pollution from the mine would also impact wildlife.

Chair Porta asked for any additional public comment. There was none.

9) Adjournment

Valerie King stated the next meeting for the commission was scheduled for September 1, 2021.

Greg Lovato then stated that NDEP would be bringing clean car regulations before the commission at the next meeting. Mr. Lovato anticipated that there would be significant public comment.

Chair Tom Porta thanked everyone for their participation and adjourned the meeting.

ATTACHMENTS

ATTACHMENT 1: W.W. Clyde Companies — NOAV Nos. 2794 & 2797

ATTACHMENT 2: Lin Cubing Inc. – NOAV Nos. 2768 & 2771

Attachment 1

W.W. Clyde Companies — NOAV Nos. 2794 & 279

