



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission [SEC.nv.gov](http://SEC.nv.gov)

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

Summary Minutes of the  
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of September 20, 2022. 9:00 AM

Bryan Building, Tahoe Room, 2<sup>nd</sup> Floor  
901 South Stewart Street  
Carson City, NV

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

**Members Present:**

Tom Porta, Chairman  
Jennifer Ott\*  
Tom Smith\*  
Adam Sullivan  
Jocelyn Torres\*  
Mike Visher  
\*participated remotely

**Members of the Public Present:**

Scott Smith, Dininni NV LLC  
Rick Warner, Washoe County

**Members Absent:**

Jason King, Vice Chairman  
Kasey KC  
Kathryn Landreth  
Mark Turner

**SEC Staff Present:**

Sophia G. Long, SEC/DAG  
Sheryl Fontaine, Executive Secretary  
Loren Borst, Recording Secretary

**BEGIN SUMMARY MINUTES**

**1) Call to order, Roll Call, Establish Quorum: (Discussion)** The meeting was called to order at 9:04 am by Chairman Tom Porta. Ms. Fontaine, the Executive Secretary, confirmed that the hearing was properly noticed and that a quorum was present.

**2) Public Comment: (Discussion)** Chairman Porta called for public comment on non-agendized items. Hearing none, he proceeded to the next agenda item.

**3) Approval of the minutes for the June 15, 2022, SEC meetings: (Action Item)** Chairman Porta requested comments from the Commission regarding the June meeting minutes. Ms. Fontaine reported that she had received minutes corrections from Greg Lovato and Commissioner Mike Visher. She read the corrections and indicated that those corrections had been made. Ms. Fontaine asked for any additional changes to the minutes. Hearing none, Chairman Porta asked

about the process of recording the minutes and whether they were typed up by a person. Ms. Fontaine indicated that they were. Chairman Porta then asked for a motion.

**Motion:** Commissioner Visher moved to approve the minutes and Commissioner Sullivan seconded. The minutes were unanimously approved.

**4) Air Penalty - Kennametal, Inc., Notice of Alleged Violation No. 2905: (For Possible Action)** Mr. Danilo Dragoni, Chief of the Bureau of Air Quality Planning (BAQP), introduced the proposed penalty to the Commission, and also introduced Andrew Tucker and Michelle Grover, both supervisors in the BAQP. Ms. Grover is the new supervisor for the Enforcement Branch and Mr. Tucker is the previous supervisor. Mr. Tucker presented the proposed penalty to the Commission. Kennametal operates a facility with various processes including powder milling and manufacturing of tungsten carbide. The facility is located near, Fernley, NV. Kennametal holds a Class II Air Quality Operating Permit originally issued on July 3, 2017, and last revised on October 6, 2022. A recent NDEP review of Kennametal's records revealed that they had exceeded some of the permitted operational limits on several occasions between June and September 2020. These exceedances were referred to the Enforcement Branch. NDEP issued a letter of alleged findings and order to appear for an enforcement conference. After the enforcement conference, NDEP determined that Kennametal had exceeded the permitted hourly throughput limit and hourly fuel consumption limit. Notice of Alleged Violation (NOAV) No. 2905 was issued on March 21, 2022, for eight instances of exceeding a permitted operational limit. The NOAV and a letter informing Kennametal of their right to appeal was delivered via certified mail on March 24, 2022. This notice and letter also included NOAV Nos. 2906, 2922, and 2923, but these were for minor violations, which have administrative fines specified in the Nevada Administrative Code; NDEP is not recommending penalties before the Commission.

Chairman Porta asked if there were any questions from the Commissioners. Commissioner Visher indicated that he had a question, as did Commissioner Torres. Commissioner Torres identified two inconsistencies in the provided information: the county was incorrectly identified in the Settlement Table as Nye County when it should have been Churchill County, and the Multiple Emission Unit Violations or Recurring Events was listed as 12 but should have been four. Mr. Dragoni acknowledged the errors, and Sophia Long confirmed that, because the Findings of Fact and Conclusions of Law were correct, these typographical errors would not affect the penalty. Commissioner Visher clarified that the Kennametal permit revision was submitted in October 2022 and that, had it been approved, they would not have had the exceedances. Mr. Tucker confirmed that and clarified for Commissioner Visher that the exceedances were caused by the amount of fuel being processed, not that there was additional equipment being operated.

Chairman Porta asked if anyone was present from Kennametal that wanted to address the Commission. The onsite business manager, Ms. Kristi Turley, came forward. Ms. Turley clarified that the Kennametal requested a permit renewal in 2017 and that, during that time, the state requested that Kennametal include their Torit dust collectors as part of the permit. Kennametal submitted a revision to the permit in 2019 and added the generator tubs as well. The calculation was incorrect on the permit, and Kennametal requested that it be changed. The permit and the revisions were approved in October 2020.

Mr. Tucker then reported that Kennametal has one prior violation within the past five years (NOAV 2637 issued March 23, 2018) and has returned to compliance.

Ms. Grover explained the penalty matrix and how the penalty amount was determined. The total recommended penalty for NOAV No. 2905 is \$5,040.00.

Chairman Porta asked if there were any further questions from the Commissioner; there were none. He then asked if the representatives from Kennametal had any further statements for the

Commissioners, and they did not. Chairman Porta then asked for a motion, reminding the Commissioners of the need to reference the Findings of Fact and Conclusions of Law included in the meeting materials when making the motion.

**Motion:** Commissioner Smith moved to approve the recommended penalty of \$5,040.00 for Air Quality Violation No. 2905. Commissioner Visher seconded the motion and it passed unanimously.

**5) Air Penalty - Robertson's Ready Mix, Notice of Alleged Violation No. 2895: (For Possible Action)** Mr. Dragoni introduced Mr. Tucker to provide details about the second penalty. Mr. Tucker stated that Robertson's Ready Mix operates a concrete batch plant in Pahrump, Nevada, and has a Class II Air Quality Operating Permit issued by NDEP on October 29, 2019. NDEP reviewed Robertson's records and found that the facility had exceeded the hourly throughput limits on several occasions between May 2020 and February 2021. These exceedances were with the flyash silo loading and the cement silo loading processes. An enforcement conference was held, after which, Notice of Alleged Violation (NOAV) No. 2895 was issued on March 21, 2022, for 12 instances of exceeding a permitted throughput limit. The NOAV and a letter informing Robertson's Ready Mix of their right to appeal was delivered via certified mail on March 25, 2022. The NOAV was not appealed.

Chairman Porta asked if there were any questions for Mr. Tucker. Commissioner Visher had several clarifying questions regarding the amount of the exceedances as well as a reported calculation error for one of the exceedances. Mr. Tucker clarified that the exceedances varied per instance, and that the calculation error occurred when equipment was operated for a period less than one hour and was due to how the compliance air quality standard is calculated.

Chairman Porta requested that the actual exceedances be presented to the Commission in table form (as they were with the Kennametal penalty) for future penalty presentations. Mr. Dragoni agreed and indicated that future penalty presentations would include the exceedance information.

Chairman Porta asked if there were any representatives from Robertson's Ready Mix, and there were not. There was also no public comment on NOAV 2895. Chairman Porta brought the matter back to the Commission for discussion and, seeing none, called for a motion, reminding Commissioners to reference the Findings of Fact and Conclusions of Law in their motion.

**Motion:** Commissioner Torres moved to approve the penalty of \$7,200.00 for Air Quality Violation No. 2895, and Commissioner Smith seconded. The motion passed unanimously.

**6) Air Penalty - Wulfenstein Construction Company, Notice of Alleged Violation No. 2888: (For Possible Action)** Mr. Dragoni introduced Mr. Tucker to provide details about the third penalty. Mr. Tucker stated that NDEP is recommending a penalty of \$9,000.00 for exceeding permitted operational limits. Mr. Tucker explained that Wulfenstein operates a facility that includes aggregate handling and processing, a hot mix asphalt plant, and a concrete batch plant in Pahrump, NV. Wulfenstein had a number of systems that exceeded the permitted operational limits for hours of operation and for material throughputs between April and December 2020. The subsequent enforcement conference resulted in NDEP identifying 15 exceedances of permitted operating parameters and the issuance of NOAV 2888. The NOAV was not appealed.

Chairman Porta asked for any Commissioner questions for Mr. Tucker. Commissioner Torres identified an error in the penalty table but indicated that it should not affect the motion. Mr. Tucker acknowledged the error and Mr. Dragoni apologized for the mistake.

Chairman Porta asked for any other questions from the Commissioners and, hearing none, asked for anything further from the Division or any Wulfenstein representatives. There were none.

Chairman Porta called for discussion from the Commission. There was none and Chairman Porta called for a motion.

**Motion:** Commissioner Smith moved to approve the recommended penalty of \$9,000.00 for Air Quality Violation No. 2888. Commissioner Visher seconded the motion, and it passed unanimously.

**7) Regulatory Petition - LCB File No. R103-22 Bureau of Air Pollution Control: (For Possible Action)** Mr. Jeffrey Kinder, Deputy Administrator for NDEP, presented an overview of the Chemical Accident Prevention Program (CAPP). After a brief description of why the program was developed and its purpose and authority, Mr. Kinder explained that this regulatory petition amends the fees and fee structure for the program, and that the last amendment was 17 years ago. As such, the program's expenditures continue to increase but revenue has remained flat, resulting in an inability for the program to maintain state-required reserves. Mr. Kinder further described the requirements CAPP has for the regulated facilities, and then turned the presentation over to Ms. Jennifer Schumacher, chief of the Bureau of Air Pollution Control.

Ms. Schumacher further detailed the proposed regulations. R103-22 amends NAC 459 to increase CAPP program fees as per the Consumer Price Index, to cover the program's existing costs - NDEP is not intending to expand or add to the program. The increase in fees will cover initial registration as well as change in ownership and confidentiality review. Ms. Schumacher explained that, in response to some stakeholder comments and concerns, the increase in registration fees will be phased in over the next two years instead of all in the first year. There is also the option for the Administrator to increase annual fees by an additional 2% to avoid larger future increases.

Ms. Schumacher provided a timeline of public notice, workshop, and comment periods, and described the number of participants and comments received for each, as well as the agency's responses. The agency does not expect these fee increases to pose a significant economic burden on small businesses.

Commissioner Visher asked a question regarding the percentage of fee increase - that it does not appear consistent. Ms. Schumacher indicated that there was some rounding involved and that the agency would do a little research about the perceived differences in percentages. Commissioner Visher also asked about the addition of a fee for confidentiality review. Ms. Schumacher clarified that the fee is to cover agency cost for that review, and that the agency receives five to ten such requests per year.

Commissioner Sullivan asked about other funding sources for the CAPP program and Ms. Schumacher and Mr. Kinder clarified that the program is completely fee-funded.

Chairman Porta asked how the 2% value was calculated. Ms. Schumacher explained that the agency reviewed values over the past 17 years and concluded that 2% was an approximate average. Chairman Porta also asked about the amount of reserve for the program. Ms. Schumacher indicated that these increases will allow the program to build its reserve back to the established levels within one or two fiscal years, and maintain it at that level. She also clarified that the increase in revenue will be used primarily for existing personnel, and that the number of regulated facilities has increased over the past several years, resulting in a subsequent increase in number of site inspections.

Commissioner Sullivan asked for clarification about new facilities versus new processes. Ms. Schumacher explained that the program experiences both - new facilities as well as facilities with processes that CAPP is not currently equipped for and must therefore develop new program areas for.

There was no public comment or discussion. Chairman Porta asked for a motion.

**Motion:** Commissioner Tom Smith moved to adopt R103-22 and Commissioner Sullivan seconded the motion. The motion to adopt R103-22 carried unanimously.

**8) Regulatory Petition - LCB File No. R104-22 Bureau of Safe Drinking Water: (For Possible Action)** Ms. Andrea Seifert, Chief of the Bureau of Safe Drinking Water, introduced Brendon Grant, supervisor of the engineering branch, to discuss the proposed regulatory petition.

Mr. Grant explained that the amendments included in petition R104-22 can be broken into three categories: general updates and regulation clean up to revisions (Sections 1, 2, 3, 4, 5, 9, and 10), pumping facility revisions (Sections 6, 7, and 8), and cross connection control revisions (Sections 11, 12, 13, and 14).

Updates to Sections 1, 2, 4, 9, and 10 include updates to the editions of referenced standards and publications related to the design, construction, operation, and maintenance of public water systems. The regulations may not reference a “most recent edition” of these references, and so regulations must be updated periodically to update them.

Section 3 requests water suppliers to submit as-built drawings within 90 days of project completion.

Section 5 specifies that pumps used in public water systems must be compatible with drinking water.

Section 6 revises regulations regarding the suction pipe in a pump facility and includes a reference to specifications and recommendations from the pump manufacturer that will limit the need for water systems to ask for special exceptions during the review and comment period.

Changes in Section 7 are similar to those in Section 6, but reference discharge piping instead of suction piping. In addition, proposed changes allow the installation of a pressure transducer on the discharge piping.

Section 8 allows a pressure transducer in pumping facilities in lieu of a permanent pressure gauge.

Section 11 removes the requirement of a reduced pressure principle assembly backflow preventer on a service connection that serves one town home or one condominium, which is similar to a single family residential connection.

Changes in Sections 12-14 have been stricken at this time - these sections will be reinstated in their original form. Further discussion between the Division and interested stakeholders may result in future amendments to Sections 12-14.

Commissioner Visher asked for clarification on the green line edits, and Mr. Grant confirmed that those sections will remain unchanged from the original regulatory language. Chairman Porta commented that, due to the inability to include “most recent version” language in NAC, the Commission will hear more regular amendments as standards are updated. He also asked how often that occurs and what the process is when a reference has been updated but not yet adopted by SEC into NAC. Mr. Grant confirmed that the Division relies on the old language until new regulations are adopted. He also explained that the water system can also ask for a special exception, which the Division generally approves.

There was no public comment or further discussion on R104-22.

**Motion:** Commissioner Sullivan moved to adopt R104-22. Commissioner Tom Smith seconded the motion and it passed unanimously.

**9) Administrator’s Briefing to the Commission: (Discussion)** Ms. Jennifer Carr, Deputy Administrator, spoke in place of Administrator Greg Lovato. Ms. Carr updated the Commission on the status of the Director of the Department of Conservation and Natural Resources. Former Director Mr. Brad Crowell was sworn in as a Commissioner for the United States Nuclear Regulatory Commission as of August 26, 2022, and that Jim Lawrence has been named acting director until a replacement is appointed.

Ms. Carr also explained that former chief of the Bureau of Water Pollution Control, Liz Kingsland, had accepted a different role within NDEP and that a replacement would be announced soon.

Ms. Carr also advised the Commission on the upcoming Governor’s Infrastructure Summit in Las Vegas, on Friday, September 30, 2022, and explained that it is related to the pending influx of federal funding resulting from the November 2021 passage of the Bipartisan Infrastructure Law. Ms. Carr explained that Nevada would be receiving approximately \$400 million over five years, for investments into Nevada’s drinking water and wastewater system infrastructure. Ms. Carr discussed some of the challenges with distribution of the funds, including identification of eligible projects prior to application for funding. She also indicated that NDEP was able to gain approval for three new permanent positions within the Office of Financial Assistance to help with these efforts. Ms. Carr clarified that these funds would stay in Nevada because they will be distributed through the State Revolving Fund.

Chairman Porta asked about the challenges, citing requirements such as Buy America. Ms. Carr explained that some of the requirements were more complicated, including Congressional definitions versus EPA interpretations, and that, where possible, the agency (as well as other states) may have some room to maneuver. Chairman Porta asked about facilities throughout the state benefiting from this funding, and Ms. Carr explained that some of the funding is reserved as principal forgiveness funding, and that NDEP is in the process of redefining the term “disadvantaged” in order to ensure that the funds are available to Nevada’s disadvantaged and underserved populations.

Commissioner Sullivan asked about deadlines for fund obligation. Ms. Carr explained that the funds need to be awarded within two years of availability, and that the Division has seven years to apply for and distribute the funds. She also discussed some pots of funds reserved for specific types of projects such as PFAS and lead service line replacement. NDEP is working to identify projects that would be eligible for these types of funds, again explaining that projects must be identified prior to applying for funding. Chairman Porta clarified that projects must be shovel ready.

**10) Public Comment: (Discussion)** Chairman Porta asked for public comments. There were none.

**11) Adjournment: (Discussion)** Chairman Porta asked for a motion to adjourn.

**Motion:** Commissioner Visher moved to adjourn. Commissioner Sullivan seconded the motion. Meeting was adjourned at 10:16 am.

*The audio recording of this meeting is available at <https://sec.nv.gov/meetings/sec-regulatory-meeting-september-20-2022>*