





## NEVADA STATE ENVIRONMENTAL COMMISSION

## FINAL MINUTES

### Regulatory Meeting

 TIME	 LOCATION
Tuesday, November 19, 2024  9:00 A.M.	Bryan Building, 901 South Stewart St. Bonnie B. Bryan Rm. 1st Fl. Carson City, NV  Video Conference 375 East Warm Springs Rd., Ste. 200 Las Vegas, NV

#### SEC members present:

Tom Porta, Chairman  
Jason King, Vice Chairman  
Kacey KC  
Kathryn Landreth  
Tom Smith\*  
Adam Sullivan  
Tina Mudd  
Alan Jenne  
Rob Ghiglieri  
\*Participated Remotely

#### SEC members absent:

J.J. Goicoechea  
Fred Reeder

#### SEC staff present:

Angela Lee, SEC/DAG  
Sheryl Fontaine, Executive Secretary  
Destiney Fitch, Recording Secretary

#### Public present:

Chris Petersen  
Sarah Graham  
Rob Paulsen  
Corredo DeGospois  
Matthew Jones  
Leo Drozdoff  
Amanda Brazen  
Jeremiah Reyes  
Molly McVocav  
Nathan Robertson  
Veronica Alumbaugh  
Lucas Foletta  
Terry Reck

---

## Table of Contents:

### *Begin Summary Minutes*

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

2) Public comments

3) Approval of September 5, 2024, meeting minutes (Action item)

### *Regulatory Petitions*

4) Regulatory Petition – LCB File No. R133-24 - Bureau of Safe Drinking Water (For Possible Action)

5) Regulatory Petition - LCB File No. R138-24 - Bureau of Air Quality Planning (For Possible Action)

6) Regulatory Petition - LCB File No. R144-24 - Bureau of Air Quality Planning (For Possible Action)

7) Regulatory Petition - LCB File No. R161-24 - Bureau of Sustainable Materials Management (For Possible Action)

### *Air Penalties*

8) Reck Brothers – NOAV No. 2892 (For Possible Action)

\*9) Reck Brothers – NOAV No. 3139 (For Possible Action)

10) Administrator’s Briefing to the Commission

11) Public comments

12) Adjournment

---

## Begin Summary Minutes

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

The meeting was called to order at 9:00 am by Chairman Tom Porta. Sheryl Fontaine, the Executive Secretary, confirmed that the hearing was properly noticed, and a quorum was present. She asked if there was a member from the AG’s office. Angela Lee, Deputy Attorney General (DAG), identified herself. Ms. Fontaine then proceeded with the housekeeping rules for the meeting. Chairman Porta inquired if there were any changes to the posted agenda. Ms. Fontaine advised that there were no changes. The Commissioners advised they had no revisions to the agenda.

---

### 2) Public comments

Chairman Porta called for public comment on non-agendized items. There were no public comments.

---

### 3) Approval of September 5, 2024, meeting minutes (Action item)

Chairman Porta requested comments from the Commission regarding the September meeting minutes. Chairman Porta listed some corrections to the minutes. Ms. Fontaine noted the corrections and indicated that those corrections would be made. Chairman Porta asked for any additional changes to the minutes. Hearing none, Chairman Porta asked for a motion.

**Motion:** Commissioner Tina Mudd made a motion to approve the minutes, Commissioner Alan Jenne seconded. The minutes were unanimously approved.

---

# Regulatory Petitions

## 4) Regulatory Petition – LCB File No. R133-24 - Bureau of Safe Drinking Water (For Possible Action)

Ms. Andrea Seifert, Chief of the Bureau of Safe Drinking Water (BSDW) at Nevada Division of Environmental Protection (NDEP), introduced Brandon Grant, Engineering Branch Supervisor. Mr. Grant presented proposed amendments in R133-24, which included updating regulation citations and adding the term "water project" to treatment regulations.

Mr. Grant discussed Sections 4 and 5 of the petition, which relate to the Preliminary Engineering Report (PER) for groundwater treatment projects under NAC 445A. A PER outlines the needs of the public water system, identifies the purpose of the water project, evaluates alternatives, and recommends a preferred course of action from both an engineering and economic perspective. Mr. Grant stated the PER ensures the treatment facility can be financially sustained by user rates and ensures protection of public health. The requirement for a PER can add several months to a project because current regulations require all public water systems to submit a PER before submitting design plans for approval. The proposed revisions exempt privately owned, non-community public water systems, such as those at mines, convenience stores, restaurants, bars, and churches, from the PER requirement. Mr. Grant stated this change is because these systems typically don't have ratepayers relying on them for daily potable water. The Bureau believes removing the PER requirement will help smaller systems comply more quickly. However, privately owned, non-community public water systems still need to submit treatment facility designs and specifications for review and approval to ensure they meet minimum design requirements under NAC 445A.

Mr. Grant discussed Section 6 of the proposed revisions, describing it as general cleanup that adds the term "water project" to the regulation. Mr. Grant then moved onto Section 7, which includes amendments necessary due to changes in Sections 4 and 5. Existing regulations allowed a treatment technology to be approved without a pilot plant study if the technology had been tested on water with similar characteristics and proven to remove primary or secondary contaminants exceeding the maximum contaminant level. Lastly, he covered Section 8, which adds the American Society of Sanitary Engineering as an approved organization for certifying individuals to test backflow prevention assemblies.

Before moving on to Section 9, Mr. Grant went over Section 13, which includes proposed amendments to NAC 445A.6681. Water treatment plants must be designed and constructed to function safely, efficiently, and in compliance with requirements imposed by several agencies including: the federal Occupational Safety and Health Administration, the Nevada Division of Industrial Relations, and the fire authority. Although the Bureau of Safe Drinking Water recognizes the importance of these agencies, the Bureau does not review treatment facilities for compliance with their laws and regulations. It was the responsibility of the water system to ensure the design of its treatment facility complies with all applicable laws and regulations. The Bureau proposes moving the term 'function safely and efficiently' to Section 9. Additionally, the Bureau proposes treatment facilities include eyewash stations to protect staff in case of an unforeseen chemical spill, ensuring both public water system and Bureau staff are protected during inspections.

Mr. Grant continued to Section 10 of the proposed regulations which introduces secondary containment requirements for chemicals at treatment facilities to protect infrastructure and all staff in case of primary container failure. Next, Section 11 of the proposed regulation specifies High-Density Polyethylene (HDPE) as suitable material for water storage tanks, commonly used in smaller public systems, due to its lower cost as compared to steel. The HDPE tanks will still need to meet the minimum design and construction requirements outlined in NAC 445AB.6708. This section also updates the American Water Works Association reference for geomembrane floating covers and liners for portable water reservoirs.

Lastly Mr. Grant went over Section 12 of the proposed regulation which revises the cap on review fees for water treatment facilities to \$15,000 for community and non-transient, non-community public water systems, and \$9,000 for transient public water systems. The importance of capping fees became apparent

after a 2022 revision. A large public system raised concerns about review costs for a \$15 million project, which would have resulted in a \$15,000 review fee. Due to this project, and after extensive review, the Bureau decided to cap the fees at \$15,000 and \$9,000.

Chairman Porta asked if there were any questions from the Commissioners. Commissioner Adam Sullivan sought clarification on Mr. Grant's explanation of the \$15,000 maximum cost for reviewing a treatment plan. Ms. Seifert confirmed the new cap covered the staff time involved in the review. Commissioner Sullivan then asked if this was representative of the maximum effort required for such a review, and Mr. Grant affirmed it was, given the complexity and length of time required. Vice Chairman Jason King inquired about any pushback on the proposed regulations, to which Ms. Seifert responded there was none; on the contrary, comments received were appreciative of the Bureau's efforts to review and improve the regulations. Commissioner Kacey KC expressed concern about listing the cost in regulation, as it could require another regulatory amendment to update. Chairman Porta asked if the Legislative Council Bureau (LCB) required specifying the dollar amount and reference material edition. Ms. Seifert confirmed that the LCB updates the fees and the edition to reflect current standards each time an amendment is proposed, ensuring applicants know the cost and where to find the updated materials.

Chairman Porta asked the industry if they wished to comment, either online or in attendance. There were none. Chairman Porta asked for any public comment. Again, there were none. Chairman Porta then brought the item back to the Commission for discussion and a potential motion to approve.

**Motion:** Vice Chairman King moved to approve LCB File No. R133-24, Commissioner KC seconded. The motion passed unanimously.

---

## **5) Regulatory Petition - LCB File No. R138-24 - Bureau of Air Quality Planning (For Possible Action)**

Andrew Tucker, Chief of the Bureau of Air Quality Planning at NDEP, introduced Ken McIntyre, Supervisor of the Planning and Data Management Branch, then outlined proposed regulation R138-24. This regulation aims to amend NAC 445B, adding a new section relating to the emission limits and control measures for Nevada Energy's Valmy and Tracy Generating Stations. The amendment is necessary to comply with the federal Regional Haze Rule (RHR) and Clean Air Act (CAA) requirements. If adopted, the regulation would be submitted to the US Environmental Protection Agency (EPA) for inclusion in Nevada's State Implementation Plan (SIP). Mr. Tucker provided some background and an overview of the RHR, and then highlighted that NDEP had coordinated with various stakeholders, including federal, state, and local agencies, businesses, conservation groups, and the public. Mr. Tucker explained under the CAA, states must periodically update their SIP for Regional Haze. Nevada submitted its plan for the second planning period in August 2022, working with affected facilities to reduce emissions and comply with the RHR. NV Energy initially planned to close the North Valmy Station (Units 1 and 2) and the Tracy Generating Station (Unit 4 Piñon Pine) to meet these requirements, but in 2023, changes in the energy landscape led to the cancellation of these closures. Instead, North Valmy was converted to natural gas firing, and emission controls installations were approved. As a result, Nevada's 2022 SIP was partially withdrawn in July 2023 for further evaluation of the updated conditions. Mr. Tucker explained that NV Energy presented its case to the Nevada Public Utilities Commission (PUC) regarding changes in the energy landscape and transmission system reliability considerations. This led to the decision to reconsider the retirement of North Valmy Units 1 and 2 (by December 2028) and Tracy Unit 4 (by December 2031). Following a public hearing, NV Energy's integrated resource plan was approved by the PUC on March 1, 2024. The proposed regulations are needed to replace the portions of the SIP that were withdrawn to allow continued operation of these units. Mr. Tucker offered to answer any questions from the Commissioners.

Commissioner Mudd asked if NV Energy had initially planned to retire the Valmy and Piñon operations or if it was due to the RHR. Mr. Tucker replied that there had been an intention to close at least the Valmy

Generating Station, with one unit planned for retirement before 2028 and the other to operate until around 2030, though the exact dates were unclear. Commissioner Sullivan inquired about the significance of the Class 1 area designation (explained during the background discussion of the RHR), which is only the Jarbidge Wilderness Area, and its relation to consideration of haze from these facilities. Mr. Tucker clarified that the requirement applied to other Class 1 areas outside Nevada as well, and analyses had been conducted to assess the impact of emissions on visibility in these areas. Chairman Porta asked if there were further questions, and there were none.

Mr. McIntyre explained revisions to Nevada's Regional Haze SIP, including an updated four-factor analysis for both units of the Valmy Generating Station to include the fuel conversion to natural gas. The analyses concluded that the fuel conversion was effective in controlling SO<sub>2</sub> emissions. Selective non-catalytic reduction and flue gas recirculation installation and operating costs were below the \$10,000 per ton threshold and an emission rate of 0.1029 pounds per million (lb/million) British Thermal Units (BTU; with a 30-day rolling average) was set based on achievable limits at North Valmy. While selective catalytic reduction was above the \$10,000 cost per ton threshold, it was included for current and future flexibility with federal regulations. A compliance deadline of June 1, 2027, was set for the North Valmy conversion, with emission controls to be installed and operating within 36 months after EPA approval of Nevada's determination of reasonable progress toward achieving natural visibility conditions.

The four-factor analysis for Tracy Unit 4 Piñon Pine was updated to reflect its closure cancellation and concluded that the installation and operating costs of selective catalytic reduction were below the \$10,000 per ton threshold. An emission rate of 0.00151 lb/million BTU (with a 30-day rolling average) was set based on achievable limits. Emission controls include pipeline-quality natural gas and steam injection, which will be installed and operating within 36 months after EPA approval of Nevada's determination of reasonable progress toward achieving natural visibility conditions.

These regulatory amendments also propose to adopt federal regulations by reference to establish requirements for the monitoring, record-keeping, and reporting of emissions, flow, and opacity data that were already part of NV Energy's Title V Operating Permit for both facilities.

Mr. McIntyre concluded that the PUC deemed the cancellation of closures necessary on March 1, 2024, and noted the conversion to natural gas and added emission controls were expected to help meet Nevada's reasonable progress goals outlined by the RHR: visibility goals by 2028 and natural conditions by 2064. No comments or questions were received during NDEP's public workshop held in October 2024.

Mr. McIntyre asked the Commissioners if they had any questions. Commissioner Kathryn Landreth asked if NDEP was confident that NV Energy's efforts would ensure compliance with air quality standards and whether the conversion to natural gas and emission controls would keep them on track. Mr. Tucker confirmed the controls were appropriate for this type of equipment and added there was flexibility in the rule to adopt stricter controls if needed. Commissioner Landreth also asked about enforcement measures, to which Mr. Tucker responded that penalties for noncompliance would apply, as with any other facility. Commissioner Jenne asked whether NDEP had discussed the proposed regulatory amendments with the PUC and if the PUC agreed with the proposed amendments. Mr. Tucker confirmed that the PUC was supportive. Vice Chairman King raised concerns about monitoring haze and air pollutants, asking if an airshed model was being used. Mr. Tucker explained that the required emission controls were based on natural gas plant standards, not the coal plant standards NV Energy had initially followed. Commissioner Rob Ghiglieri questioned whether the conversion to natural gas and the potential for increased energy production would limit future energy generation. Mr. Tucker reassured him the emission rates being set were based on engineering analyses and would not hinder NV Energy's ability to generate electricity. Commissioner Landreth asked for clarification on why the plants needed to remain open due to a transmission issue. Mr. Tucker explained that changes in the state's energy demands required the continued operation of the facilities to maintain grid reliability and address transmission concerns. Mr. Tucker mentioned that an NV Energy representative was available for further questions on electrical transmissions. Chairman Porta inquired about the existing control systems for coal-fired plants, asking whether the SO<sub>2</sub> scrubbers and bag

houses would need to be taken offline due to the conversion to natural gas and low NOx burners. Mr. Tucker responded that while additional SO2 scrubbers might not be required for compliance, they might still need them depending on permitting requirements, though he was uncertain.

Chairman Porta asked the Commissioners if they had any further questions then welcomed Matthew Johns, Vice President for Environmental Management and Land Management for NV Energy. Commissioner Ghiglieri inquired whether Senate Bill 123 during the 2013 Legislative Session (cited in NV Energy's letter in support of R138-24) was the reason for eliminating coal-fired power plants. Mr. Johns clarified that the bill concerned the closure of plants in Southern Nevada in 2013, including the Reid Gardner and Navajo Generating Stations. NV Energy has been focused on solutions for Valmy separate from Senate Bill 123 and whether to either retire or exit coal-fired generation in the state. This is a step in that direction, as part of these efforts to maintain system reliability and comply with regulations. Chairman Porta revisited his earlier question about offset costs from removing SO2 scrubbers and bag houses. Mr. Johns responded that the conversion to natural gas might reduce some operational costs but would not significantly affect overall capacity. Commissioner Ghiglieri followed up asking if the existing caps could cause NV Energy to develop another generating station in that area. Mr. Johns said it would not.

Chairman Porta asked the public if they wished to address agenda item #5. Seeing none, he closed public comment and turned to the Commissioners for further discussion and a proposed motion.

**Motion:** Vice Chairman King moved to approve LCB File No. R138-24. Commissioner Ghiglieri seconded. The motion passed unanimously.

---

## **6) Regulatory Petition - LCB File No. R144-24 - Bureau of Air Quality Planning (For Possible Action)**

Mr. Tucker introduced Steven McNeece, Supervisor of the Greenhouse Gases and Mobile Sources Branch in the Bureau of Air Quality Planning at NDEP, and introduced the proposed amendment to NAC 445B, which adds a new section for the Clean Trucks and Buses Incentive Program, as required by Assembly Bill 184 (82<sup>nd</sup> Nevada Legislative Session). This program provides voucher-based incentives for adopting medium- and heavy-duty zero-emission vehicles. The program is for public, private, and tribal entities, and targets vehicles with gross vehicle weight ratings over 8,501 lbs. Qualified vehicles range from small box trucks to larger vehicles such as school buses and tractor trailers. The program also includes incentives for retrofitting vehicles with electric or hydrogen fuel cell powertrains. The number of incentives is generally limited to ten per year per entity but could increase based on a number of criteria. For example, school districts, counties with a population greater than 700,000, small, disadvantaged businesses, and tribal governments are eligible for up to 15 incentives per year. The incentive amount covers the cost difference between clean and conventional vehicles. Mr. Tucker further explained the application process, eligibility criteria, voucher approval timelines, and reporting requirements. Mr. Tucker then invited the Commissioners to ask questions before handing the presentation over to Mr. McNeece.

Commissioner Mudd asked if the Clean Trucks and Buses Incentive Program was federally funded and whether it would end if federal funding was eliminated. Mr. Tucker explained that the funding would come from the Federal Highway Administration through AB184 and pass from the Nevada Department of Transportation (NDOT) to NDEP. Mr. Tucker added that NDEP would seek other federal grant opportunities if needed. Commissioner Mudd also asked about NDEP's capacity to handle the workload of evaluating applications, to which Mr. Tucker replied that an additional Environmental Scientist position was included and had already been filled. Commissioner Jenne inquired if the Federal Highway Administration would fund the program for multiple years, and Mr. Tucker confirmed it would. Commissioner Jenne also asked if the federal funding covered staffing costs, to which Mr. Tucker explained that the grant would cover 95% of staffing costs, with NDEP covering the remaining 5%. Chairman Porta asked about NDEP's current funding level for this program, and Mr. Tucker stated staffing costs were approximately \$180,000 per year for

staffing. Annual allocations are based on a percentage of the overall grant given to NDOT for the program which is approximately \$4,000,000 per year. Vice Chairman King asked if other states have implemented similar programs to which Mr. Tucker responded, New York has one, but he isn't aware of any other states using similar funds for their program.

Chairman Porta asked if there were any further questions for Mr. Tucker, and with none, Steven McNeece presented the proposal to adopt regulations for implementation of the Clean Trucks and Buses Incentive Program under NAC Chapter 445B. The regulation outlines vehicle eligibility, the application and approval processes, application review timeline, voucher redemption, and reporting requirements. Mr. McNeece outlined vehicle and contractor eligibility requirements and explained that entities receiving incentives must own or operate the vehicle for at least three years and submit annual reports for three years. Non-compliance could result in the purchaser being required to refund the voucher. The NDEP may require scrappage of the vehicle being replaced. In place of scrapping a diesel or gas vehicle, alternatives like selling or donating could be approved. Following the public workshop for this regulation the Bureau received four letters in support of this regulation, including the suggestion to provide more resources to those participating in the program. Mr. McNeece noted feedback after LCB review led to changes to the proposed regulation reducing the reporting burden on program participants and removing requirements for tracking routes and using itemized price estimates instead of Manufacture Suggested Retail Price. Mr. McNeece then asked if the Commissioners had any questions.

Commissioner Landreth raised concerns about a potential loophole in the scrappage requirement, allowing people to sell their gas vehicles instead of reducing their presence on the road. Mr. Tucker explained that the Clean Trucks and Buses Program aimed to promote the adoption of medium- and heavy-duty zero-emission vehicles but did not specifically focus on emissions reductions or scrappage requirements. Commissioner Mudd asked how the program would support smaller communities who must travel farther and the feasibility of using zero-emission vehicles with a shorter range than gas-powered vehicles, to which Mr. Tucker clarified that participation is voluntary and that the Division would help smaller communities assess their needs. Commissioner Mudd followed up by asking if any rural communities have used the program and Mr. Tucker stated there are some rural communities in the process of implementing the program. Commissioner Jenne inquired if scrappage was a condition for Federal Highway Funding, and Mr. Tucker confirmed that it was not currently a requirement. Chairman Porta asked if there had been interest in the program, and Mr. Tucker stated that many have reached out (primarily private entities), and the Bureau is compiling a contact list. Vice Chairman King requested an update on the program's progress in about a year, which Mr. Tucker agreed to. Chairman Porta opened Petition R144-24 for public comment. With none, he turned to the Commissioners for further discussion or a motion.

**Motion:** Vice Chairman King moved to approve LCB File No. R144-24, requesting the Bureau of Air Quality Planning provide an update in a year. Commissioner Landreth seconded. The motion passed unanimously.

---

## **7) Regulatory Petition - LCB File No. R161-24 - Bureau of Sustainable Materials Management (For Possible Action)**

Jeffrey Kinder, Deputy Administrator with NDEP, introduced himself, as well as Annalyn Settlemeyer, Chief of the Bureau of Sustainable Materials Management, and Kayla Alm, Supervisor of the Bureau's Sustainability Branch. Note that previously submitted petition R151-24 affects many of the same sections of the NAC as petition R161-24, so R151-24 was combined with R161-24 and R151-24 was withdrawn. Mr. Kinder went on to explain the federal Resource Conservation and Recovery Act (RCRA) and that Nevada is an adopt by reference state, and to outline program goals and objectives with respect to solid and hazardous waste.

Ms. Alm stated that in order to continue administering the RCRA program, the State of Nevada must stay current on the adoption of finalized federal regulations. Nevada has adopted federal regulations through July 1, 2018. The Bureau's proposed regulatory amendment aims to align Nevada's state program with federal

regulations through July 1, 2022, and includes housekeeping updates to clarify existing regulations. Ms. Alm discussed several proposed regulatory changes, including exempting the collection of defective Takata airbag inflators from hazardous waste requirements, adding aerosol cans to the universal waste regulations, modernizing the determination of ignitable liquids, and conforming to changes to Canada-specific hazardous waste import/export recovery and disposal operation codes. She also discussed a correction from the EPA to the Generator Improvement Rule.

Mr. Kinder reviewed the applicability of the Bureau's regulations, then introduced proposed exclusions for hazardous secondary materials (HSM), including the Generator Controlled Exclusion, the Transfer-Based Recycling Exclusion, and the Remanufacturing Exclusion. Adopting all three exclusions as written would prevent the mixing of waste materials with a facilities' wastewater as a means of disposal and would also delete the term "publicly available," which would result in facility records being unavailable to NDEP. NDEP requires that all facility records be available for inspection to ensure that the HSM exclusion conditions are met. The Bureau engaged early with the regulated industry and received almost 70 comments. The Bureau has responded to each comment and a summary of comments and Bureau responses has been provided. Mr. Kinder discussed three proposed non-substantive changes to R161-24 as a result of the early engagement with the public and interested stakeholders. These changes are reflected in the current green-line version. The official public workshop was held using the amended (green-line) version of the petition; no comments requiring revision of the current version were received.

Chairman Porta asked if any commissioners had questions for Mr. Kinder. Commissioner Landreth asked about a provision being eliminated in the federal regulation related to the Clean Water Act, to which Mr. Kinder responded it was removed to clarify that dilution options would not apply to the new hazardous secondary materials exclusions being adopted.

Chairman Porta asked if there were any further questions, and then for public comment. Rob Paulson, Director of Environmental Health and Safety at Tesla, expressed support for the proposal and appreciated the Bureau's efforts to update solid waste rules. Chris Peterson, Director of Environmental Permitting for Comstock Inc., also spoke in support of the Bureau but cautioned against combining two actions in the proposal, specifically the removal of references to RCRA parts 271 and 272. Mr. Peterson requested clarification that state waste designations would still be honored. Collado DeGospois from Comstock Inc. spoke in support of the petition and mentioned Comstock's involvement in solar panel waste management, with plans for additional facilities in Silver Springs and two more in Southern Nevada, in response to California not allowing solar panels in landfills and those solar panels being transported to Nevada as a result. Daniel Lieber from American Battery Technology Company thanked the Bureau for their ongoing collaboration in developing a regulatory framework for battery recycling in Nevada, emphasizing the Bureau's commitment to a circular economy for battery materials.

Chairman Porta asked if there were any questions for Mr. Lieber or the public. Veronica Alamba from the Nevada National Guard inquired about the addition of other companies for recycling hazardous waste and the fate of solar panels after they are sent for recycling. Mr. DeGospois explained that their demonstration-scale facility processed solid waste into clean aluminum scraps, clean glass pearls, and silver-rich tailings, which were sold as reusable materials, ensuring nothing goes to landfills. Chairman Porta closed public comment and asked Mr. Kinder about the RCRA components 271 and 272. Mr. Kinder clarified that the Bureau's state-run program remains unaffected by recent EPA changes. Chairman Porta thanked Mr. Kinder, and no further questions were raised by the commissioners.

**Motion:** Commissioner Landreth moved to adopt the LCB File R161-24. Commissioner Jenne seconded. The motion passed unanimously.

---

## Air Penalties



## 8) Reck Brothers – NOAV No. 2892 (For Possible Action)

Chairman Porta asked Ms. Fontaine about a potential issue with the notice for this agenda item. Angela Lee, SEC DAG, and Lucas Foletta, representing Reck Brothers, confirmed the public notice had been received by Reck Brothers. Mr. Tucker introduced Michelle Grover, Supervisor of the Enforcement Branch in the Bureau of Air Quality Planning at NDEP. Mr. Tucker introduced the Reck Brothers agenda item, reminding the Commission that the facility was ordered to pay a \$12,000 penalty and complete a \$12,000 Supplemental Environmental Project (SEP) as a result of Notice of Alleged Violation (NOAV) 2892 during the December 5, 2023, SEC hearing.

Ms. Grover continued to provide an overview of the matter, stating Reck Brothers operates the Hi Line Quarry Asphalt Plant near Ely, Nevada, was last issued a Class II Air Quality Operating Permit on November 14, 2023, and has held this permit for over 20 years. On July 21, 2021, an inspection of the asphalt plant was conducted and the Bureau found that required testing had not been conducted. On April 1, 2022, NOAV 2892 was issued for failure to test. At this time, the Division also issued Stop Order No. 2022EA-04, requiring testing to be completed within 90 days of the next time each emission unit was operated and that operations could not continue until testing was completed. This was not brought to the Commission in 2022 because the NDEP wanted to work with Reck Brothers on achieving compliance. However, Reck Brothers operated in both 2022 and 2023 without completing testing. A second Stop Order was issued in July 2023 (2023C-06). The Division presented NOAV 2892 to the Commission on September 7, 2023, with a proposed penalty of \$24,000. The Commission requested that NDEP consider alternative penalty calculations for Reck Brothers and asked the Division to present a new recommended penalty at a future meeting.

On December 5, 2023, the Division presented alternative penalty calculations but ultimately recommended upholding the \$24,000 penalty. The Commission upheld the \$24,000 penalty but split it into a \$12,000 fine and a \$12,000 SEP. On December 8, 2023, the Commission issued the final Order for \$24,000, requiring Reck Brothers to pay \$12,000 payable to the state and \$12,000 to be held in abeyance contingent on Reck Brothers completing an SEP agreeable to and to the satisfaction of the Division. Ms. Grover then provided a summary of the SEP process.

Ms. Grover reported after the December 5, 2023, SEC meeting, Mr. Tucker attempted contact with White Pine County officials about potential air quality projects for the SEP but received no response. It was initially assumed that Reck Brothers would fulfill the SEP through a paving project, but further inquiries were suspended due to Reck Brothers being under a stop order until valid testing was completed. Despite regular communication with Reck Brothers, their consultants, and attorneys, as of November 19, 2024, Reck Brothers had not proposed a project to satisfy the SEP requirements. Nor had they achieved compliance with testing requirements related to their stop order. The Division sought guidance from the Commission on whether the SEP remained a viable option and whether Reck Brothers could complete the SEP without further violating the stop order and current Air Quality Operating Permit. Ms. Grover concluded her statements and requested time after Reck Brother's statement for further clarification or questions.

Chairman Porta asked if Reck Brothers had paid the \$12,000 penalty; Ms. Grover confirmed the payment had been received in December 2024. The discussion focused on the remaining \$12,000 for the SEP, and Ms. Grover explained the amount had been held in abeyance. Commissioner Sullivan asked if Reck Brothers could just pay the remaining penalty, and Ms. Grover confirmed that was an option. Commissioner Mudd inquired if there was a statutory timeline for the SEP, and Mr. Tucker clarified there was none. Vice Chairman King asked about Reck Brother's response to the SEP given the regular communication between the Division and Reck Brothers. Mr. Tucker explained that most communications focused on finding a resolution to the ongoing noncompliance issues. Commissioner Mudd asked if Reck Brothers had received guidance on developing the SEP, and Mr. Tucker referred to the State Environmental Commission information packet for policy information. Commissioner Landreth asked when Reck Brothers had achieved compliance and Ms. Grover stated Reck Brothers was still not in compliance, despite completing a source test, which was largely invalidated and the valid portions of the test failed. Chairman Porta confirmed with Ms. Grover that Reck Brothers operated in 2024 against the stop order.

Lucas Foletta, representing Reck Brothers, explained that most communications with NDEP had focused on the second violation (NOAV 3139, agenda item #9) rather than the first violation (NOAV 2892) or the SEP. He acknowledged there had been no coordination with NDEP on the SEP project details but indicated that he had been in contact with NDEP counsel and thought the SEP had been completed in the form of a paving project for the Railroad Museum dirt parking lot in White Pine County, with an estimated cost of \$27,000, Mr. Foletta provided photos and an estimate for the work. He reiterated that Reck Brothers had completed the project and suggested discussing the SEP further with the Commission.

Chairman Porta clarified that while the project had been completed, the Division had not been consulted or informed about it. Mr. Foletta confirmed that Reck Brothers had not notified the Division but believed the project had been completed as required. Chairman Porta expressed concern that Reck Brothers had not coordinated with the Division regarding the project, and Mr. Tucker emphasized the lack of coordination made it difficult to verify the SEP's validity or appropriateness. Chairman Porta asked whether Reck Brothers had been compensated for the project and Mr. Foletta confirmed the project had been done without pay. Ms. Grover stated the final Order issued by the SEC indicated the project needed prior approval from the Division. Mr. Foletta countered by stating that the penalty should be reduced, as the project had been completed, and a \$12,000 fine wouldn't aid compliance.

Commissioner KC asked when the project had been completed, and Mr. Foletta responded it was finished in October 2024. Commissioner KC asked when the Division was made aware of the project and Ms. Grover confirmed the Division had learned about the project on October 31, 2024. Vice Chairman King questioned if the Division could evaluate the project as a valid SEP after the fact, and Ms. Grover expressed concerns that approving it after the fact could encourage improper behavior. Vice Chairman King asked about the analysis involved with approving a SEP. Mr. Tucker emphasized the need for more data to analyze the project's environmental impact and reiterated the facility's non-compliance is still an issue. Commissioner Ghiglieri asked if a clear list of SEP criteria had been provided to Reck Brothers. Mr. Tucker replied that NDEP would work with the facility for project approval once a project was proposed and Ms. Grover confirmed a criteria list is available.

Danilo Dragoni noted that if Reck Brothers had proposed the project earlier, NDEP would require compliance before completing the SEP. Mr. Foletta argued it had been unfair to request the SEP before Reck Brothers was compliant, highlighting a lack of clear communication. Chairman Porta, citing the SEC Order, reiterated the project needed prior approval from the Division and that the Commission's goal is Reck Brothers' compliance. Vice Chairman King shared Chairman Porta's concern, noting the SEP did not include the additional 25% amount usually assigned to a SEP, and that Reck Brothers had been complicating the process for both the Commission and NDEP. Chairman Porta asked SEC DAG Angela Lee for approval to table agenda item #8 and move to agenda item #9, with the possibility of returning to agenda item #8 later. Ms. Lee agreed, suggesting they combine both items and continue to agenda item #9.

**[If following audio, please skip ahead to agenda item #9 \*. The Commission revisits agenda item #8 and finalizes the motion later in this meeting, as indicated by \*\*]**

**\*\***Commissioner Landreth and Vice Chairman King expressed concerns about the way Reck Brothers managed the SEP, but acknowledged a project was completed and asked whether NDEP could analyze the project and move forward by approving it as a qualified SEP.

Jennifer Carr, NDEP Administrator, stated that had the project been presented in advance, it would not have been approved. The Division would not have authorized Reck Brothers to operate their noncompliant equipment under a stop order. She further explained that alternative resources for Reck Brothers to complete the project would have been discussed, but unfortunately, the Division was not provided the opportunity for such discussions. Commissioner Jenne asked whether the entire \$27,000 cost of the project was a donation or if some was compensated. Mr. Reck emphasized the details of the project, reiterating that he didn't receive any compensation for the work completed. Mr. Reck also stated it was donated on behalf of Reck Brothers and NDEP to Northern Nevada Historical Railroad as an improvement project. Chairman Porta

asked whether Reck Brothers had notified the Division after completion of the project and Mr. Reck said no but said the project was completed with the intent of satisfying the SEP. Chairman Porta brought it back to the Commission for discussion. Commissioner KC expressed concern about asking NDEP to review the project in retrospective, citing setting an undesirable precedent and Commissioner Landreth agreed. Commissioner Mudd asked for clarification about possible actions. Chairman Porta explained the options and asked for and received confirmation from Angela Lee, SEC DAG. Vice Chairman King suggested allowing Reck Brothers another opportunity to complete a SEP. However, he emphasized the need for a short time frame, as well as prior approval from NDEP. Commissioner Mudd agreed but stressed the importance of NDEP providing clear guidance on the SEP requirements. Commissioner KC expressed hesitation, citing concerns about the penalty associated with agenda item #9. She also inquired whether the 25% multiplier not included in the previous fee should be added back in. Commissioner Landreth recommended reinstating the original fine for Reck Brothers due to their ongoing compliance issues and the burden they had already placed on the agency. Commissioner Ghiglieri concurred, highlighting poor communication with NDEP and the strain it placed on the fee-funded agency, recommending that Reck Brothers pay a fee to address the situation. Mr. Tucker clarified that SEC-imposed fines go to the State General Education fund, not NDEP. Chairman Porta concurred. Commissioner Jenne supported the fee-based approach.

Chairman Porta opened public comment. Seeing none, he brought the item back to the Commission for a motion, potentially amending the previous order.

**Motion:** Commissioner KC made a motion for agenda item #8 to approve a new order for a \$12,000 fine for Reck Brothers NOAV 2892, in lieu of the SEP that was issued in the original order on December 5, 2023. Commissioner Ghiglieri seconded. Angela Lee, SEC DAG, instructed that a new Order should be issued rather than amending the previous order. Commissioner KC amended her motion to approve a new Order for a \$12,000 fine for Reck Brothers for NOAV 2892 instead of the SEP approved in the December 5, 2023, Order. Commissioner Ghiglieri seconded. The motion passed unanimously.

[If following audio, please skip to \*\*\* section in agenda item #9, page 13]

---

### **\*9) Reck Brothers – NOAV No. 3139 (For Possible Action)**

Mr. Tucker summarized this agenda item stating the NDEP issued NOAV 3139 to Reck Brothers on February 15, 2024, for a failed source test for particulate matter 10 microns or less in diameter (PM10). The NDEP-recommended penalty for this NOAV is \$21,024. Ms. Grover reviewed the specifics of the violation including an enforcement conference held with Reck Brothers on January 26, 2024, to discuss the failed source test for PM10 on November 4<sup>th</sup>, 2023. Ms. Grover provided some additional details about the tests and stated since these tests failed, Reck Brothers has been emitting over 400% of their permitted limit for PM10. These tests are federally required and other small hot mix asphalt plants in Nevada have completed these tests every five years to stay in compliance. Reck Brothers has therefore had an economic benefit over other small Nevada hot mix asphalt companies because they did not initially test and have not retested. Reck Brothers appealed NOAV 3139 in February 2024 (and amended the appeal in March 2024) but withdrew it in September 2024, rendering the violation final with the recommended penalty of \$21,024. Ms. Grover then outlined the penalty calculations and reminded the Commission that Reck Brothers has had four violations in the last five years and is currently not in compliance with their permit.

Chairman Porta then asked if the Commission had any questions for the Division. Commissioner Ghiglieri asked why the different violations weren't considered in this penalty calculation. Ms. Grover stated the other violations are related but are not the same. Chairman Porta inquired if a licensed company had conducted the tests and asked how confident NDEP is in the tests; Mr. Tucker confirmed the test had been contracted by Reck Brothers and that NDEP did not know the contractor's qualifications. Ms. Grover clarified that the PM10 test had failed due to a post-test leak check issue, though all other requirements for that test had been met. Commissioner Mudd asked about the approval of the source test protocol, and Mr. Dragoni explained that NDEP does not require testing protocol approval before testing. Test protocols submittal is required to

allow NDEP staff to attend the testing if possible. Chairman Porta questioned whether the test methods used were USEPA reference method tests and whether throughputs were met; Mr. Tucker confirmed the test methods were EPA test methods, used throughout the state. Ms. Grover verified that throughputs were approved by NDEP Bureau of Air Pollution Control's Compliance branch. Chairman Porta then closed the discussion and invited Reck Brothers to speak.

Mr. Foletta discussed some of the challenges and problems with scheduling and performing the tests. He then argued that there was no law requiring a fine for a failed test and asserted that Reck Brothers was being penalized for not passing a test they were attempting to complete to comply with NOAV 2892. He stated Broadbent, the contractor hired by Reck Brothers to conduct the testing, had failed to perform the test correctly, yet Reck Brothers was being held accountable. Mr. Foletta expressed concern that it could take another year or two to reschedule the test based on his discussions with Broadbent. Mr. Foletta stated Reck Brothers is already in financial deficit after paying for the testing and requested the penalty amount be held in abeyance and used to cover the next set of tests within 12-24 months. He also questioned how NDEP had allowed Reck Brothers to operate for 20 years without passing these tests, renewing their permits annually despite being aware of the situation.

Chairman Porta questioned whether anything had been done to improve the plant to reduce emissions, and Mr. Foletta said the stack had been modified at Broadbent's suggestion. Chairman Porta followed up asking about adjusting the permit to reduce the allowed throughput. Mr. Foletta acknowledged that the permit requirements needed to be addressed. Commissioner KC questioned why Reck Brothers had not adjusted their testing process if it wasn't working for them, especially since other small asphalt facilities had been able to complete their tests. She asked if the difficulty in completing tests was due to the parameters set for Reck Brothers' permit. Ms. Grover explained that the Division allows facilities to test at lower levels if they can prove their typical operations were at the lower throughput levels, and that the Division extrapolates the results to the higher permitted level. Chairman Porta clarified that this would lead to an adjustment of the permit to reflect those parameters. Mr. Tucker stated that Reck Brothers would need to request that the Division set new operational parameters for their permit. Chairman Porta asked if there were any questions for Reck Brothers or the Division. There were none.

Mr. Foletta confirmed they need to adjust their permit and invited Terry Reck, owner of Reck Brothers, to speak. Mr. Reck provided his perspective on the Division's statements. When asked by Chairman Porta if he notified the Division about the SEP project, Mr. Reck said he did not seek approval for the project in advance. Mr. Reck expressed his frustration with the initial statements by the Division, denying they knew about the project meant to fulfill the SEP. Mr. Reck also confirmed he completed the initial permit application with incorrect values and that the permit information needed to be corrected for accurate outputs from the facility. Mr. Reck went on to explain the history of the plant, their inability to test, and the stacks they added in an attempt to pass the tests.

Mr. Foletta noted that with winter approaching, there would be no immediate opportunity for another test. Chairman Porta reiterated that the goal is resolution and bringing Reck Brothers into compliance. Chairman Porta assured Mr. Reck that the goal is not to put him out of business but rather ensure future compliance.

Chairman Porta then asked the Commissioners if they had any questions. Vice Chairman King asked the Division how Reck Brothers could come into compliance. Chairman Porta added to consider the long-term with their permits as well. Ms. Grover responded that Reck Brothers' stop order would be lifted with valid and passing source tests. Vice Chairman King clarified that he was referring not only to the testing, but also potentially lowering throughput and any other modifications required to ensure passing tests. Chairman Porta restated that the goal is not to test to fail again, but to resolve the issues and then test. Ms. Grover stated NDEP's role is not to design facilities but did offer some suggestions and mentioned that these suggestions have been presented to Reck Brothers in the past. Mr. Foletta stated that the problem is timing, not the plant. Mr. Tucker said the Division is willing to work with facilities regarding the required timing of protocol submission. Chairman Porta emphasized to Mr. Reck that this was a federally regulated source, and if the issue was not addressed, the EPA could become involved, imposing fines and potentially shutting the

business down. Chairman Porta reassured Mr. Reck that the Division did not want that outcome. Mr. Foletta reiterated the timing for the testing did not work for Reck Brothers, to which Chairman Porta pointed out other businesses had managed to complete the required testing, and he found it difficult to understand why Reck Brothers had not been able to do the same. Ms. Grover stated that the Division had been attempting to work with Reck Brothers since 2021 to avoid enforcement, but those efforts had been unsuccessful.

**[\*\*At this point Chairman Porta brings the discussion back to the Commission to revisit agenda item # 8 – see \*\* on page 10]**

\*\*\*The Commission discussed different throughput test options, including extrapolating to permitted values, and clarified what constitutes test validity. There was some discussion with NDEP and Mr. Foletta regarding acceptable throughput values during testing. Commissioner Mudd asked if there was an option for a pre-test to assess the effectiveness of improvements before the source testing. Mr. Tucker explained that engineering testing could be done but would need to be specifically requested. Ms. Grover stated that the engineering testing could not be used to lift the stop order. Commissioner Jenne asked whether there was some way to have the modifications assessed for effectiveness prior to testing. Mr. Tucker stated that there are some assessments that could be performed to evaluate the efficacy of engineering controls, but NDEP does not perform those analyses. A third party may be able to conduct those assessments.

Chairman Porta opened public comment. There were no public comments. The Commission continued discussion.

Commissioner Mudd asked why Reck Brothers was allowed to continue to operate for 20 years without a valid/passing source test without previously receiving a stop order. Ms. Grover referred to previously mentioned ongoing communications and associated leniency for small businesses on the part of NDEP. Commissioner Ghiglieri inquired when the current permit expired and when it would be renewed. Mr. Foletta confirmed that the permit had been recently renewed. Ms. Grover clarified that the renewed permit is valid for five years and had been issued in November 2023. She added that not renewing a permit would effectively put a business out of operation, a step that NDEP was not eager to pursue. Chairman Porta asked about the timing of the stop order and issuance of the permit renewal and Ms. Grover answered that the stop order was lifted because the test was conducted and NDEP did not yet have the results of the test when the renewal was issued.

Chairman Porta asked Ms. Lee if she had any comments, to which she responded that the Commission should focus solely on the violations indicated in the NOAV and base the penalty decision only on those violations. Ms. Lee also outlined some options for the Commission regarding imposing discipline for these violations. Chairman Porta offered the Commissioners the option to table the agenda item and revisit it if necessary. There was some discussion about tabling the item. Commissioner Jenne acknowledged previous efforts by the facility and the difficulties associated with living in a small community and suggested splitting the penalty into a fine and a SEP. Vice Chairman King asked the SEC DAG whether the Commission had the authority to consider information from another agenda item when deciding on this item or if the Commission could only consider matters related to this agenda item. Angela Lee indicated that the Commission could consider mitigating circumstances, including the previous Order.

**Motion:** Commissioner KC made a motion to approve the penalties as assessed in NOAV 3139 but to split the penalty into a \$11,024 fine and \$10,000 SEP, adding 25% to the SEP amount (for a total SEP value of \$12,500), and that Reck Brothers must communicate with NDEP ahead of time for approval of the project considering they are in a stop order. Commissioner KC imposed a deadline of June 30, 2025, for Reck Brothers to reach an agreement with NDEP for a project, with completion of the project by the end of 2025. Commissioner Landreth seconded. There was discussion on this action setting a precedent. Commissioner Landreth withdrew her second and Commissioner Jenne seconded. Five commissioners voted in the affirmative. Chairman Porta, Vice Chairman King, and Commissioners Landreth and Sullivan opposed. The motion passed.

Vice Chairman King expressed his appreciation to Mr. Reck for attending the meeting, providing testimony,

and presenting his case, and that he hoped Mr. Reck left the meeting feeling that the SEC had treated him fairly.

---

## **10) Administrator's Briefing to the Commission**

Jennifer Carr, NDEP Administrator, acknowledged Commissioner Landreth's reappointment to the SEC and expressed gratitude to both her and the other Commissioners. She recognized Ashley Taylor as the new Chief of the Bureau of Mining Regulation and Reclamation and mentioned that about half of the NDEP Carson City staff had recently moved into new office space in Reno, which is expected to assist with recruitment and staff retention. Ms. Carr also noted that this would provide additional space in the Bryan Building for other DCNR programs to use. She shared that NDEP has two bills for the upcoming session: one regarding delegation of authority for new formation of small health districts in Nevada, and the other aimed at providing a tool to ensure NDEP can recover costs that the state may incur in the event that the state has to step in to address environmental concerns if the financial assurance required by a permit or by law isn't sufficient or in other instances requiring state response. In response to Commissioner Landreth's inquiry, Ms. Carr reported NDEP's vacancy rate had improved from 18% in 2023 to less than 10%, with the goal of reaching below 8%. Recruitment of engineers continues to be a challenge. There was brief discussion about whether reassessing the need for engineers versus scientists would help address the continuing permitting back log.

---

## **11) Public comments**

Chairman Porta called for public comments, but none were received, and the public comment period was closed.

---

## **12) Adjournment**

Commissioner Landreth made a motion for adjournment, Vice Chairman King seconded. The hearing was adjourned.

*The audio recording of this meeting is available at <https://sec.nv.gov/meetings/sec-meeting-november-19-2024>*