



Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of December 3, 2014 9:00 AM

Bryan Building Carson City
901 South Stewart Street
Carson City, NV

Members Present:

E. Jim Gans, Chairman
Tom Porta, Vice Chairman
Mark Turner
Cary Richardson
Jason King
Kathryn Landreth
Dave Prather, Acting State Forrester

Members of the Public Present:

Pat Lorello, Robinson Mine
Ron Bell, Bango Refining
Mike Baughman, Humboldt River Basin
Water Authority
Bart Hiatt, A&K Earth Movers
Gary Fowkes, A&K Earth Movers
Stephanie Wilson, US EPA

Members Absent:

Rich Perry
Jim Barbee
Tony Wasley

SEC Staff Present:

Henna Rasul, SEC/DAG
Valerie King, Executive Secretary
Misti Gower, Recording Secretary

BEGIN SUMMARY MINUTES

1) **Call to order, Roll Call, Establish Quorum: (Discussion)** The meeting was called to order at 10:00 am by Chairman Jim Gans. Ms. King, the Executive Secretary, confirmed the hearing was properly noticed and that a quorum was present.

2) **Public Comments: (Discussion)** Chairman Gans called for public comment. There was none.

3) **Approval of Agenda: (Action Item)** Chairman Gans asked if there were any changes or comments regarding the agenda. Ms. King stated that item 8, temporary regulation P2014-11, had been removed from the agenda by NDEP. She indicated it was anticipated to be before the SEC in a future meeting.

Commissioner Turner moved to approve the agenda as changed and Commissioner Landreth seconded. The agenda was unanimously approved.

4) **Approval of the minutes for the October 8, 2014 SEC meetings: (Action Item)** Chairman Gans requested comments from the Commission on the October meeting minutes. Hearing none, he asked for a motion.

Commissioner King moved to approve the minutes as presented and Vice Chairman Porta seconded. The motion passed unanimously.

5) **Penalty Assessments for Air Quality Violations: (Action Item)** Mr. Rob Bamford, Bureau Chief of Air Pollution, and Mr. Francisco Vega, supervisor of the Compliance and Enforcement Branch, presented the violations to the Commission. The handouts provided during the meeting are included as attachments to the meeting minutes.

- A. A&K Earth Movers, Inc. – NOAV No. 2512, alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit. The recommended penalty amount is \$24,840.00.
- B. Bango Refining NV, LLC. - NOAV Nos. 2516 through 2521 for alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit and also failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit. The total recommended penalty amount is \$31,800.00.
- C. Robinson Nevada Mining Company – NOAV Nos. 2498 through 2506 for alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit and also failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit. The recommended penalty amount is \$55,100.00.

A&K Earth Movers, Inc.: Mr. Bamford informed the Commission that A&K Earth Movers operates a hot mix asphalt plant in Churchill County under a Class II Air Quality Operating permit. During a scheduled stack test in August 2014, a BAPC inspector observed excessive fugitive emissions from material transfer equipment which was comprised of three separate permitted emission points. One point was missing a permit required sprayer and two points had required sprayers present, but neither was operative.

The proposed penalty amount of \$24,840.00 is based on the number of systems in violation, the time basis in which the violation occurred and the history of non-compliance ([Attachment 1](#)). Mr. Bamford added that on October 29, 2014, A&K provided an affidavit testimony from one of its operators that quantified the use and dates of the missing sprayers. A&K proposed a smaller time multiplier which would yield a lower penalty amount. Because the information was brought forward after the enforcement conference and the issuance of the NOAV, BAPC did not reconsider the proposed penalty amount. Procedurally it was too late to change the NOAV. The company was disputing the number of times the equipment was used without the sprayer in comparison to the length of time the sprayer was down. A&K was informed that this proceeding would provide an opportunity to present its information ([Attachment 2](#)). The Commission decided to hear from A&K before Mr. Vega explained the penalty matrix.

Bart Hiatt, President of A&K and Gary Fowker, Crushing Material Manager, came forward to address the Commission. Mr. Hiatt explained that he did an investigation to identify and correct the problems and compiled the information presented to the Commission. He stated they now

have a procedure in place and are in compliance. Mr. Hiatt stated that after interviewing the employees, he was able to determine how many times the crusher had run. Based on that information, he was able to recalculate the penalty to a lower amount. Mr. Hiatt stated he was asking the Commission to reduce the fine to the amount he had recalculated. A&K was fined for being without the sprayer for eight weeks, but after his investigation, he was able to determine the crusher had only operated six days of the eight week period without the sprayer; therefore A&K proposed that the out of compliance time multiplier was one week.

Mr. Vega then presented to the Commission the calculation associated with the original penalty recommendation. He then offered a revised calculation penalty matrix based upon A&K's new information ([Attachment 3](#)). Mr. Vega stated A&K had four violations within the past three years. One was similar to the existing violation and the other three were different. The revised calculation penalty was \$16,740.00 based on five days of violation.

Commissioner King questioned the minimal difference in the fine amounts based on going from eight weeks to five days. He expressed concern that the possibility exists, in the penalty matrix's current framework, that a lower penalty could be assessed for a longer period of violation depending on whether the day or week multiplier is applied.

Mr. Bamford stated that because the company knew the NDEP inspector would be there, the obvious violations observed and this being their fifth violation, that a time multiplier of one week for five days of violations seemed inadequate. This was also based on how BAPC has historically determined similar violations. Mr. Vega added that historically anything less than seven days is calculated by days not weeks. Commissioner King asked NDEP if the new information provided by A&K had been presented during the enforcement conference, would NDEP be presenting the revised penalty today. Mr. Vega stated that would be correct.

Vice-Chairman Porta asked what the basis was for applying five days of violation to the multiplier when Mr. Hiatt testified his company was in violation for six days. Mr. Vega stated it was based on operational records and the information Mr. Hiatt provided.

After further discussion, the Commission expressed the importance of applying penalties fairly and consistently.

Motion: Vice Chairman Porta moved to accept NDEP's revised recommended penalty of \$16,740.00 for Air Quality Violation No. 2512. Commissioner Turner seconded the motion and it passed unanimously.

Bango Refining NV, LLC: Mr. Bamford stated that Bango Refining NV (Bango) operates a recycled oil-refining facility in Churchill County under a Class 2 Air Quality Operating Permit. During an inspection of the Bango facility it was discovered that four permitted systems had exceeded their permit operating limitations. During the enforcement conference, Bango provided additional information which reduced the number of violations. After reviewing the information provided, BAPC recalculated the penalty amount based on the time the violations occurred, number of emission units involved and no previous violations within the last 60 months.

Mr. Vega then presented the penalty matrix calculation ([Attachment 4](#)). Vice Chairman Porta questioned the penalty multiplier for NOAV 2518. Mr. Vega stated that historically, less than seven days of violation uses a multiplier of "days" for the penalty calculation. Violations occurring for more than seven days will have a multiplier using "weeks" for the penalty calculations. The Commissioners expressed concern regarding the application of the penalty matrix. A company could be out of compliance for weeks and pay less than if they had been out of compliance for a few days. Mr. Vega stated this was a consistent fine for the level of permit.

Vice Chairman Porta stated he typically sees a consistency of days or weeks for a facility, not a mix. He stated he would like to see BAPC use a consistent multiplier, days or week, per facility.

Ron Bell facility manager for Bango Refining came forward to address the Commission. Mr. Bell stated he was not disputing the penalty. He indicated the violations were a result of people not paying attention. He stated that since the NOAVs were issued, Bango had made changes to ensure compliance.

Motion: Commissioner Landreth moved to approve the recommended penalty of \$31,800.00 for Air Quality Violations No. 2516 through 2521. Commissioner Richardson seconded the motion and it passed unanimously.

Robinson Nevada Mining Company: Mr. Bamford explained that Robinson operates a copper mine in White Pine County under a Class 2 Air Quality Operating Permit. In June 2013, a compliance inspection was conducted by BAPC. During the inspection, seven violations were discovered. In June 2014, BAPC held an enforcement conference with Robinson. During the enforcement conference, Robinson was able to provide additional information. After reviewing the information provided, BAPC based the penalty amount on the time the violations occurred, number of emission units involved and the fact no previous violations had occurred within the last 60 months. Due to the high count of violations and systems, BAPC used discretion and applied the lowest multipliers to prevent an astronomic penalty amount.

After Mr. Bamford had explained each violation, Chairman Gans questioned the penalty amount being that there were so many violations. Mr. Bamford explained that if BAPC had used the high end of the penalty matrix, the fine would be \$297,650.00. The lower end would be \$129,450.00. Mr. Bamford indicated BAPC felt that the penalty of \$129,450.00 for a minor source permit was not typical of what BAPC has done historically.

Mr. Vega then explained how BAPC used the multiplier to come up with the recommended penalty amount of \$55,100.00 ([Attachment 5](#)).

Chairman Gans expressed surprise that Robinson had not had a violation in over five years and then suddenly had so many. He asked if anyone from Robinson wanted to come forward. Mr. Pat Lorello, Environmental Manager for Robinson Mining Company (RMC), approached the Commission. Mr. Lorello stated he was not there to contest the penalty but to acknowledge the cooperative process they have had with BAPC. He stated RMC responded to the inspection results by taking several actions, including completing the stack test, improving record keeping and reporting, plus many more to ensure all issues are fully addressed. Mr. Lorello explained there have been a lot of changes with the environmental staff resulting in a greater focus on air quality.

Motion: Commissioner King made a motion to accept the recommended penalty of \$55,100.00 for Air Quality Violation No. 2498 through 2506. Commissioner Turner seconded the motion and it passed unanimously.

6) R103-14 Bureau of Water Quality Planning - South Fork Humboldt River and South Fork Reservoir Water Quality Standards Revision: (Action Item) Mr. Randy Pahl, Special Projects Coordinator, presented the proposed regulation amendments to the Commission using a handout ([Attachment 6](#)). Mr. Pahl stated the revision will separate the South Fork Reservoir from the South Fork Humboldt River and establish appropriate beneficial uses and water quality criteria. He stated that workshops had been held as well as an open comment period. He stated that no

comments had been received and therefore, no changes were made to the proposed regulation amendments.

Mr. Pahl stated the Nevada Administrative Code (NAC) for the South Fork Humboldt River was created in 1970 with no recognition of the South Fork Reservoir, as it was constructed in 1988/89. Currently the reservoir is protected under the South Fork Humboldt River standards, including beneficial uses and water quality criteria. Physical and hydrologic characteristics of a reservoir differ from a river; therefore, different water quality criteria are needed. The revision spells out beneficial uses for the South Fork Reservoir. Water quality criteria are proposed that will protect the beneficial uses of the reservoir based upon USEPA guidance and NDEP research and determinations.

Chairman Gans asked if there was anyone from the public who wanted to comment. Mr. Mike Baughman, Executive Director with the Humboldt River Basin Water Authority (HRBWA), approached the Commission. Mr. Baughman explained the HRBWA has concerns regarding three of the beneficial uses proposed for the reservoir. The uses are irrigation, municipal and industrial. He stated that these uses do not apply to the reservoir and are unlikely to ever apply. He stated that the South Fork Reservoir is part of the State Park system, intended for recreational use only. The HRBWA sees no reason to list uses that do not exist. Mr. Baughman stated that the implication of applying these uses could be the water body being listed as impaired, specifically because of the municipal use. Mr. Baughman communicated that HRBWA did not participate in the public hearings when the draft was proposed. He requested, on behalf of the HRBWA, that the Commission either adopt the regulation without the three stipulated beneficial uses or else delay the adoption of the regulation.

Mr. Pahl explained NDEP's position regarding why the uses Mr. Baughman is concerned about are being applied. The criteria are in place to protect the downstream water quality as well. Commissioner Richardson asked if anything being brought up by HRBWA would give NDEP pause about what it is proposing. Deputy Administrator Dave Gaskin stated it would not.

Motion: Vice Chairman Porta moved to adopt regulation R103-14. Commissioner Landreth seconded the motion and it passed unanimously.

7) R118-14 Bureau of Safe Drinking Water - Public Water Systems Regulation Amendment: (Action Item) Ms. Andrea Seifert, Public Water System Compliance Branch supervisor, presented the proposed regulation amendments to the Commission using a handout ([Attachment 7](#)). Ms. Seifert explained the amendments update the Nevada Safe Drinking Water's (SDW) "adoption by reference," adding a new federal regulation associated with the Total Coliform Rule that was promulgated between July 1, 2006 and July 1, 2014. The amendments also include the federal change to the definition of "Lead Free." Lastly, the amendments contain general housekeeping improvements.

Ms. Seifert stated that the amendment will allow NDEP to continue to seek and obtain Primary Enforcement Responsibility, or, "Primacy" approval by the USEPA for the Safe Drinking Water Program (SDWP). She stated that the SDWP regulates public drinking water systems using a combination of State regulations and Federal regulations. The water systems are required to comply with federal regulatory requirements, regardless of whether or not Nevada adopts the federal programs. In 1978, Nevada was granted primary enforcement responsibility. In order to retain primacy for federal drinking water programs, NDEP submits "Primacy Package" revision applications for USEPA approval for each new drinking water regulation promulgated by the federal government. The Primacy packages must prove to the USEPA that the state regulations are as stringent as the federal regulations.

Ms. Seifert stated that public workshops were held to inform and involve the regulated community of the proposed regulations. She stated that numerous outreach opportunities were utilized. NDEP solicited input from technical assistance providers and public water systems regarding tools being developed for implementation of the Revised Total Coliform Rule and the Lead Free Amendments. A few comments were received which resulted in the December 2, 2014 "green-line" amendments provided as a handout to the Commission (**Attachment 8**). She stated that overall, the comments received were positive and a letter of support had been received as well.

Ms. Seifert and Ms. Jennifer Carr, Bureau Chief of Safe Drinking Water, explained each of the proposed amendments and answered the questions asked by the Commissioners.

Motion: Commissioner King moved to adopt regulation R118-14, including the December 2, 2014 amendment. Commissioner Richardson seconded the motion and it passed unanimously.

8) Temporary Regulation R2014-14 - Bureau of Safe Drinking Water, Subdivision Process Amendment: (Action Item) This item was pulled from the agenda.

9) Arsenic Rule Extensions - Bureau of Safe Drinking Water: (Discussion) Ms. Jennifer Carr, Chief for the Bureau of Safe Drinking Water, provided an update on the compliance status of the public water systems that have received Exemptions and subsequent Extensions by the SEC over the past eight years to comply with the federal Arsenic Rule.

Ms. Carr stated that the revised arsenic standard of 10 parts per billion (ppb) was enacted on January 22, 2001 and became enforceable five years later on January 23, 2006. When the new drinking water standard became enforceable, it affected 105 out of 326 water systems in Nevada. In 2006 and 2007 the SEC granted exemptions to 64 qualifying water systems, providing them three additional years to comply. A number of systems received a two year extension in 2008, 2010, and 2012. These water systems had a total of 14 years to comply. She stated that, of the ten water systems issued exemptions by the SEC, seven have achieved compliance since the 2012 SEC hearing. The remaining three public water systems which remain noncompliant are McDermitt, Lander County District 2 in Austin and Silver Knolls Mutual Water Company.

Ms. Carr explained that McDermitt had completed drilling and construction of its new well in November but was waiting on sampling results for arsenic. If the sample results are positive, McDermitt will be in compliance, using the new well as its primary drinking water source. If the sample results are above 10 ppb, McDermitt will have to take more time to design and install an arsenic treatment plant, resulting in an Administrative Order to be issued on January 24, 2015. McDermitt will be required to Show Cause why NDEP should not pursue action in District Court. This process would include an evaluation by an internal Penalty Panel consisting of NDEP Bureau Chiefs who will determine if a penalty is warranted.

Ms. Carr stated that Lander County District 2 has its "New Reese River Valley" well online. Safe Drinking Water staff will conduct a sanitary survey inspection. She stated that the initial arsenic sampling results are 5ppb and that NDEP staff is working through a final review of documents to determine official compliance.

Ms. Carr stated that concerns expressed by the Commission two years ago regarding Silver Knolls, have come to fruition. Silver Knolls has an engineering firm; however, the schedule it implemented two years ago was aggressive and left little room for complications. The water system is overseen by Washoe County Health District, which is NDEP's partner for implementation of the program in that county. Ms. Carr went through a list of issues with Silver Knolls and stated that an inspection had been conducted on December 2, 2014. She stated that NDEP expects violations for quarterly reporting and compliance issues. Silver Knolls will receive an

Administrative Order on January 24, 2015 and will be required to Show Cause why NDEP should not pursue action in District Court. The process will include an evaluation by a NDEP internal Penalty Panel consisting of Bureau Chiefs.

10) Administrator's Briefing to the Commission: (Discussion) Mr. David Gaskin, NDEP Deputy Administrator, provided the briefing to the Commission. Mr. Gaskin thanked the Commissioners for their time and attention they give to the many issues brought before them.

Mr. Gaskin informed the Commission that NDEP submitted comments to the USEPA and the Army Corp of Engineers regarding the proposed change of the federal regulation that redefines "Waters of the US." Mr. Gaskin explained NDEP's comments submitted in the letter, which he stated had been signed by the Department of Conservation and Natural Resources Director and the Department of Agriculture Director and the Colorado River Commission of Nevada Executive Director ([Attachment 9](#)).

Vice Chairman Porta shared that Nevada has good ground water and surface water protection rules, while many other states do not. He stated that Nevada is not in the majority when it comes to opposing the USEPA's proposed regulation.

Mr. Gaskin stated that NDEP also submitted comments on One-Eleven D, a proposed USEPA regulation to reduce greenhouse gas emission from power plants. The comments were submitted jointly with the Public Utilities Commission and the Governor's Office of Energy. He stated that this is an ongoing issue and that NDEP will keep the Commission updated as things progress.

Mr. Gaskin moved on to the upcoming Legislative session. He stated that there is some Bill Draft Requests (BDR) that could affect NDEP. He explained that the BDRs contain only brief descriptions at this point and that NDEP will be watching to see how they evolve and will keep the Commission updated.

Mr. Gaskin thanked Ms. King for her work on the SEC Information Packet that will be distributed to the Commissioners. He stated that the packet will be a good resource for them.

12) Public Comment: (Discussion) Chairman Gans asked for public comments. Hearing none, he asked when the next SEC meeting will be held. Ms. King stated the next meeting will be held February 11, 2015 in the Tahoe Conference Room on the 2nd floor of the Bryan Building.

13) Adjournment: (Discussion) Meeting was adjourned at 2:20pm.

ATTACHMENTS

ATTACHMENT 1: A&K Earth Movers Penalty Information

ATTACHMENT 2: A&K Earth Movers Handout to Commissioners

ATTACHMENT 3: A&K Earth Movers Revised Penalty Matrix

ATTACHMENT 4: Bango Refining NV Penalty Information

ATTACHMENT 5: Robinson Nevada Mining Penalty Information

ATTACHMENT 6: R103-14 Presentation Handout

ATTACHMENT 7: R118-14 Presentation Handout

ATTACHMENT 8: "Green-lined" Amendment

ATTACHMENT 9: Letter submitted to EPA from NDEP

ATTACHMENT 1

A&K Earth Movers Penalty Information

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