




NEVADA
**STATE ENVIRONMENTAL
 COMMISSION**

**FINAL
 MINUTES**

Regulatory Meeting

 TIME	 LOCATION
December 5, 2023 9:00 AM	Bryan Building, 901 South Stewart St. Bonnie B. Bryan Rm. 1 st Fl. Carson City, NV Video Conference 375 East Warm Springs Rd., Ste. 200 Las Vegas, NV

SEC members present:

- Tom Porta, Chairman
- Kacey KC
- Kathryn Landreth*
- J.J. Goicoechea
- Tom Smith*
- Adam Sullivan
- Rob Ghiglieri
- Fred Reeder
- Tina Mudd

SEC members absent:

- Jason King, Vice Chairman
- Alan Jenne

SEC staff present:

- Ziwei Zheng, Deputy Attorney General*
- Sheryl Fontaine, Executive Secretary
- Loren Borst, Recording Secretary

**Nevada Division of Environmental Protection
 staff present:**

- Jennifer Carr, Administrator[#]
- Danilo Dragoni, Deputy Administrator
- Jeffrey Kinder, Deputy Administrator
- Jennifer Schumacher, Chief, Bureau of Air Pollution Control[#]
- Andrew Tucker, Chief, Bureau of Air Quality Planning[#]
- Andrea Seifert, Chief, Bureau of Safe Drinking Water[#]
- Angelito Accad, PE, Bureau of Safe Drinking Water*
- Michael Antoine, Environmental Scientist III, Bureau of Safe Drinking Water*
- Jens Christiansen, Compliance Officer, Bureau of Air Pollution Control*
- Jasmine Curiel, Program Supervisor, Laboratory Certification Officer, Bureau of Safe Drinking Water[#]
- Michelle Friedlander, Publications Editor, Bureau of Administrative Services
- Misti Gower, Supervisor, Bureau of Air Quality Planning*

Brendon Grant, PE, Supervisor, Professional Engineer, Bureau of Safe Drinking Water*
Nicholas Greer, Compliance Officer, Bureau of Air Pollution Control*
Michelle Grover, Enforcement Supervisor, Bureau of Air Quality Planning#
Katherine Hansen, Planning, Bureau of Air Pollution Control*
Corinne Hasenau, Environmental Scientist III, Bureau of Safe Drinking Water*
Ricky Hensley, Admin Support, Bureau of Air Pollution Control*
Chung Je, PE, Supervisor, Bureau of Air Quality Planning*
Emma Lintz, Mobile Sources, Bureau of Air Quality Planning*
Jaimie Mara, Supervisor, Bureau of Air Pollution Control*
Art Marr, PE, Bureau of Safe Drinking Water
Shannon Miller, Compliance Officer, Bureau of Air Pollution Control*
Chad Myers, Minor Source Supervisor, Bureau of Air Pollution Control
Stephanie Perley, Environmental Scientist III, Bureau of Safe Drinking Water*
Nathan Rash, Enforcement Staff, Bureau of Air Quality Planning
Gregg Rosenberg, Major Source Supervisor, Bureau of Air Pollution Control
Nicholas Schlafer, Planning, Bureau of Air Quality Planning*
Tanya Soleta, Supervisor, Bureau of Air Pollution Control
Walter Slack, PE, Bureau of Safe Drinking Water*
Ashley Taylor, Supervisor, Bureau of Air Pollution Control*

Public present:

David Brown*
Haley Brown*
Daniel Chan*
Kai Chung*
Sarah Collins*
Carolyn Faircloth*
Ryan Finley*
NG*
Jordan Haas*
Carol Lane*
Kelly McGowan, Director, Division of Water Resources*
Scott McNulty, Broadbent & Associates, Inc.**
Keibi Mejia
Paige Menicucci*
Hope Mitchell*
James Morwood*
Michael Perry, Laboratory QA Officer, Southern Nevada Water Authority*
Annalize Porter*
Terry Reck, Reck Brothers LLC#
Tara Reck, Reck Brothers LLC**
Nathan Robertson, Reck Brothers LLC#
Chad Stephens*
Ryan Talley*

*Participated remotely

#Presenter

In these minutes:

- [Call to order, roll call, establish quorum](#)
 - [Public comments](#)
 - [Approval of prior meeting minutes](#)
 - [Penalty Assessments](#)
 - [Regulatory Petitions](#)
 - [Administrator's briefing to the Commission](#)
 - [Public comments](#)
-

Begin Summary Minutes

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

The meeting was called to order at 9:01 am by Chairman Tom Porta. Ms. Sheryl Fontaine, Executive Secretary, confirmed that the hearing was properly noticed, and a quorum was present.

Chairman Porta had Ms. Fontaine read the housekeeping rules for the meeting. Ms. Fontaine noted the adjustments to the agenda including typographical changes to the first paragraph on page 1 and the decreased penalty on page 2 for the Reck Brothers, LLC. from \$24,000 to \$12,000 for the Notice of Alleged Violation (NOAV) No. 2892.

Motion: Approval of modified agenda

By: Commissioner Goicoechea

Second: Kacey KC

Vote: Motion passed unanimously

Chairman Porta welcomed new Commissioners Fred Reeder, Robert Ghiglieri, J.J. Goicoechea, and Alan Jenne and requested they briefly introduce themselves. He also mentioned the passing of former Commissioner Melvin Close before moving on to agenda item 2.

2) Public comments

There was no public comment on non-agendized items.

3) Approval of September 7, 2023, minutes (Action item)

Chairman Porta requested comments from the Commission regarding the September meeting minutes. Commissioner KC noted a correction to the spelling of her first name. Ms. Fontaine noted the corrections and indicated those corrections would be made. With no additional changes to the minutes, Chairman Porta asked for a motion.

Motion: Approval of the September 7, 2023, minutes as amended

By: Commissioner Landreth

Second: Commissioner Goicoechea

Vote: Motion passed unanimously

Penalty Assessments

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

Andrew Tucker, Chief, Bureau Air Quality Planning (BAQP) introduced fellow presenters, Jennifer Schumacher, Chief, Bureau of Air Pollution Control (BAPC), and Michelle Grover, BAQP Enforcement Supervisor. He reminded the Commission that the recommended \$24,000 penalty issued to the Reck Brothers, LLC. for NOAV No. 2892 was tabled on September 7, 2023, so NDEP could reevaluate the penalty calculations. Before turning the discussion over to Ms. Grover, Mr. Tucker informed the Commission BAQP provided them with a copy of their September 7th presentation and an updated Findings of Fact and Conclusions of Law.

Ms. Grover recapped the Reck Brothers, LLC violation presentation from September 7, 2023. She explained

the company operates a hot asphalt mix plant near Ely, NV, and has two drum mixers that require source testing to directly assess the extent of air pollution and evaluate emission control strategies' effectiveness. Class 2 facilities like Reck Brothers are required to perform source tests every five years and the tests represent an important snapshot into how well controls are working to mitigate pollutants of concern.

The larger of the two drum mixers, System 3A, has a limit of 200 tons per hour of asphalt and runs on diesel with a limit of 928 gallons per hour. They did not complete the initial testing required for particulate matter (PM) for both PM 10 and PM 2.5, nitrogen oxides (NOx), carbon monoxide, sulfur dioxide, and volatile organic compounds (VOCs). The smaller drum mixer, System 3, has a limit of 150 tons per hour of asphalt and runs on propane with a limit of 280 gallons per hour.

Reck Brothers missed the renewal testing required for all the above pollutants for System 3A, except PM 2.5, which was not required. These pollutants have national and Nevada air quality standards established to protect health and the environment. Per the penalty matrix, the penalty for missing source testing is \$600 per system, per month, up to a maximum of \$10,000 per system for each test. Between the two systems, 11 tests were missed at the time of issuance of the NOAV in 2022, and 32 months have passed since testing was to be completed. This capped the penalty at \$10,000 per system, per test, and for the 11 tests, the total penalty was \$110,000. Due to a variety of factors, the decision was made to only pursue penalties based on one test for each of the two systems leading the Division to recommend a \$20,000 penalty.

In addition to source testing, Systems 3 and 3A did not complete the initial opacity compliance demonstrations (IOCDs) required for opacity. The purpose of conducting IOCDs is to verify each emission unit is not emitting excessive amounts of particulate matter into the air, and that any control devices are effectively controlling emissions. According to the penalty matrix, missing IOCD comes with a penalty of \$200 per system, per month, up to a maximum of \$2,000 per system. At the time the NOAV was issued, 32 months had passed, capping the penalty at \$2,000 per system. For the two systems, the total penalty was \$4,000. The overall recommended penalty amount was \$24,000.

Before discussing the Commission's request to revisit the basis for the penalty amount, Ms. Grover cleared up some confusion and misconceptions stemming from the September 7th meeting which were addressed with the facility on September 14, 2023.

First, the plant needs to run at 90% of the permitted limit for eight hours to complete the source test. NDEP's policy states the facilities can run at normal operating conditions substantiated by their records. However, if emission results indicate an exceedance when linearly extrapolated to 100% of the limit, then Compliance may limit the throughput in the future to avoid exceedances. The time for tests is defined by EPA-approved methods. Only under limited circumstances can the Division deviate from these requirements. In this instance, the testing only required a minimum of one hour per run for three runs, or a total of three hours, if the facility can hit all the requirements in the method in that hour.

NDEP then addressed the belief that the Division must be on site for testing and the testing could not be conducted on weekends. Ms. Grover clarified that tests can be run any day of the week. NDEP does request at least two weeks' notice so they can send a compliance inspector to the test, if possible. She further clarified that the Division does not need to be at the test but stated that it could be helpful to have an inspector there to provide feedback since they are trained in source testing methods.

Lastly, Ms. Grover addressed the requirement that facilities waste asphalt. Facilities are given a lengthy period to complete renewal testing from no sooner than 365 days before permit expiration to no later than 90 days before permit expiration. In that time, it should be possible to find a day where normal operating conditions allow for three runs of testing with minimal to zero waste. In addition, extra asphalt can be put to other uses, such as being used for cold patching.

Reck Brothers has run the plant multiple times since the last meeting. System 3, the smaller system, has run 11 times. System 3A, the larger system, has run twice. Division staff was present for System 3 three-run

testing on Saturday, November 4, 2023. As of December 5, 2023, System 3A has yet to be tested and no date for testing has been proposed. The Division expects System 3A to be tested the next time it is run. A new permit was issued for Reck Brothers on November 14, 2023.

Ms. Grover then reminded the Commission that they had requested that the Division revisit the basis for the penalty amount and potentially reduce it from \$24,000 by considering the limited number of days the facility operated. This proved problematic because the facility's records were either missing or incomplete for the entire period this violation pertains to. Only recently has the facility started providing more accurate records.

Source tests are a part of the regular costs associated with operations at every regulated facility. For Class 2 facilities like Reck Brothers, such tests are required every five years. In addition to the importance of maintaining air quality, delaying, or avoiding source tests results in an unfair economic advantage over those facilities that complete testing on time. The penalty matrix is structured to account for the economic advantage provided by basing the penalty on the number of months elapsed since the source test was to be performed.

The Division stands by the original recommendation of \$24,000 through consistent application of the penalty matrix. However, the Commission has raised concerns about the appropriateness of the penalty. NDEP did not feel it appropriate to deviate from the confines of the matrix based on the number of days operated. Therefore, in our opinion, the only reconsideration of the penalty matrix would be for the number of systems. For example, one system could be considered thus lowering the penalty to \$12,000.00. However, this ignores the fact that there were two separate systems with different emission profiles for which testing was not completed.

Chairman Porta asked for questions from the Commission.

Commissioner Mudd asked if the facility is unable to meet its maximum throughput, can it be extrapolated?

Ms. Grover explained that is not the case. If the facility normally runs at 50%, their testing results put them under their emission limit for exceeding. But if we extrapolate that throughput to 100% of that limit, putting them above their emission limit, we can then limit that throughput in the future.

Commissioner Mudd said she asked the question because some of the more remote plants have a hard time getting the necessary tonnage required to complete the testing.

Ms. Grover agreed and stated that is why they are allowed to operate normally.

Commissioner Mudd followed up by saying it seems the smaller intermittent plants would have a hard time meeting the throughput, considering it is a challenge for some of the larger plants.

Ms. Grover agreed and said that is why we do not require them to operate at 100% but rather whatever they normally do.

Mr. Tucker further clarified that, because they typically operate at 50%, it does not guarantee that the throughput would be limited. The only case where that might be considered is when there are concerns that if the plant operated at full capacity as permitted, it would result in adverse impacts to air quality.

Chairman Porta voiced concerns about the fairness to other companies that have previously come before the Commission. The penalty matrix has been developed over many years to create a fair playing field, and a fair assessment of penalties, to avoid us being in the situation we are in today. He asked if the Division has combined these sources to lessen the penalty matrix in the past for non-contentious items. For example, if a facility has multiple violations, does NDEP negotiate and combine them into a single violation then go through the matrix to come up with a penalty? He wanted to make sure the matrix developed through this Commission is equitable, and that no one is treated unfairly.

Mr. Tucker said there may have been situations where penalties were assessed for individual pollutants but did not believe systems had been combined with the intent of reducing the penalty in the past.

Commissioner KC told the Bureau how much she appreciated how they worked with the company and for their presentation. She noted that she didn't recall requesting a penalty reduction but rather, the same concern about how this would impact other facilities in the future. This one is not based on things that could be looked at like the number of days because they weren't available. She recalled the Commission asking if it was possible to find records to back something less and feels extremely uncomfortable arbitrarily cutting the penalty in half because it will then have to be considered for all proponents who come forward.

Commissioner Reeder asked if the facility could operate both systems simultaneously.

Ms. Schumacher answered it is usually either or. However, testing is required for both systems.

Commissioner Reeder asked if one is smaller than the other can it be used on slow days while the larger one is used on bigger jobs.

Ms. Schumacher confirmed that is the case.

Commissioner Ghiglieri referenced the point from the last meeting that the testing had to be up to 90% efficiency. He reiterated that a facility can run at a lower percentage and therefore, the smaller system was tested once and then the larger ran twice. He then wanted to know why the facility was not tested during those two runs.

Ms. Schumacher responded that she understood that for the first run on the larger plant, the facility contacted the source testers a week before the scheduled run, and they were not able to come out due to the short notice. For the second test, it was then decided at the last minute to run the larger facility again instead of the smaller one.

Before representatives from the facility spoke, Commissioner Landreth wanted clarification from the Division that reducing the penalty under these circumstances would be unprecedented.

Chairman Porta said that the Division had not previously combined sources for violations into one to reduce the penalty.

Nathan Robertson, the Reck Brothers Construction Manager, commented that such an action would be unprecedented by the Division because there is no other facility in Nevada that operates similarly. They produce a very limited amount, approximately 5,000 tons total, during a good year. The company never runs both plants simultaneously because there is no need. The two plants are to accommodate the amount they have, but at their altitude, there are a lot of limitations on what the machinery can do. He challenged the "unprecedented" rationale. Mr. Robertson went on to say that their operation is atypical and the systems in place need to reflect the variety of facilities that operate in the state. Reck Brothers operates differently than Las Vegas Paving in Clark County and Granite Construction here in Reno; it is a completely different methodology.

Terry Reck, owner of Reck Brothers, LLC., spoke next. He echoed Mr. Robertson's comment that the two systems never run simultaneously. Mr. Reck noted the limited opportunities in White Pine County and the surrounding areas they service at this time. He also said when the bigger jobs come along, there is competition with the larger plants, which is one of the reasons they invested in a large plant. Mr. Reck further explained he has no problem testing the plants as required but the company is jumping through the same hoops as Las Vegas Paving and Granite Construction which are large, multi-million-dollar corporations.

Mr. Robertson reminded the Commission that Reck Brothers did not intentionally avoid testing. To get someone out to Ely to test where so little is run, and the demands of testing companies are such that they are, they had to reschedule three times due to weather and crew and testing company availability. There were logistical problems. They appreciate NDEP's flexibility, working together, and coming out on a weekend.

Mr. Reck mentioned the difficulties with the third-party permitting consultant they used for years and its failure to resolve arising problems. He said bringing the facility back into compliance is the company's number-one priority. And, although asphalt production has been shut down for the year, they anticipate being able to get System 3A tested with help from their new consultant, Broadbent & Associates.

Tara Reck, Reck Brothers' legal consultant, informed the Commission that since the September meeting, the company has worked closely with NDEP and Broadbent & Associates to get the company back into compliance. She said that despite the scheduling difficulties, the facility was able to make sure they had enough jobs to produce sufficient tonnage to complete the test, even at the reduced amount. Ms. Reck emphasized that even with the matrix, there is an opportunity for some flexibility, particularly for a small business that is integral to the rural counties in Eastern Nevada. She also appreciated the proposed reduction and how far everyone has come to help Reck Brothers get back into compliance.

Chairman Porta opened the floor for questions from the Commission.

Commissioner Mudd wanted to know if a permit was issued without conducting source testing or if it was dependent on the source test results.

Ms. Schumacher explained that when their original permit expired in 2019, Reck Brothers allowed it to lapse. As a result, a new permit was issued to continue their previous operations. The larger plant was added at the end of 2019.

Commissioner Mudd asked if the source testing within X number of days was required for the 2019 renewal.

Ms. Schumacher said yes, it was required.

Chairman Porta asked if any consideration was given to limiting the throughput on the permit knowing there were few jobs.

Mr. Robertson responded that sometimes they have one, big job. Other times they will have ten small ones. It is very irregular. Typically, it will depend on what the Nevada Department of Transportation (NDOT) is doing but it can also depend on what kind of big jobs there are. But there have been years where production is very low because there are no large projects.

Chairman Porta also wanted to know if the plant was ever portable, operating in different areas in White Pine County.

Mr. Robertson responded no, not to produce asphalt. However, there was a time when they went down to Moapa to a sand plant to dry sand back in the early 1990s. But apart from that, it never left the area.

Chairman Porta then asked if they did land a bigger job, could they move and set up elsewhere.

Mr. Robertson said they never considered doing that because of the cost as well as the effort to do so. Reck Brothers has trucked asphalt from the plant as far south as Tonopah, out to Garden Pass past Eureka, as well as some other places. He also said that if they have jobs further away, they will truck asphalt in from Cedar City or elsewhere to alleviate costs.

Chairman Porta moved on the public comment on this item.

Scott McNulty, from Broadbent & Associates, offered comments virtually. He said that the larger plant, System 3A, only operated for about 10-12 hours the entire calendar year, which equates to very short operational durations and not enough to perform the required test. Mr. McNulty agreed with Mr. Tucker's belief that NDEP never previously combined sources, looking at a set of fines for one plant to combine it with another. He then commented on the penalty matrix and noted the goal is to look at the overall scope and come up with a fair penalty based on the situation.

Chairman Porta asked the Division if this is a New Source Performance Standards (NSPS) source subject to federal requirements.

Ms. Schumacher said yes.

Commissioner KC noted that Mr. McNulty said the plant operated for ten hours but the Division stated the records were not clear. She said that based on this information the Bureau could have used a daily calculation for the penalty matrix which would have significantly increased the fine amount then reiterated the earlier question on finding a way to reduce the penalty based on the data.

Mr. Tucker said they were asked to reconsider the amount based on the length of time operated. However, that does not apply to the violation for failure to test.

Commissioner KC asked if both systems were operational during the period for which the penalty was assessed.

Mr. Robertson confirmed the larger plant operated for a total of 12 hours, once for five hours, and once for seven hours. He also confirmed the smaller plant did operate during that time but did not have additional data available.

Mr. Reck added that information can be supplied by Broadbent because Reck Brothers provides weekly reviews.

Commissioner Ghiglieri, referencing the minutes from the September meeting, stated the Division was to work with the facility to modify the testing requirements because it was believed they had to operate at 90%. He asked NDEP if the modification was made following that meeting or if was it the normal operating procedure from before that meeting.

Ms. Schumacher explained the Division never instructed the facility to operate at 90%. It is possible that they thought they had to run at that level because many other source testing companies in the country require it. NDEP did clarify this point with the facility after the last SEC meeting.

Ms. Reck said that even though Reck Brothers relies on a consulting company to assist with testing and were the ones who recommended doing so at 90%, this information was not negated or clarified during the September meeting which is why NDEP was tasked with working with the facility to modify the requirements. She also said that Reck Brothers and NDEP, with help from Broadbent, were able to complete the test as instructed by the Commission.

Mr. McNulty confirmed he was the one who suggested Reck Brothers test at 90% because it is better to run near their maximum to ensure facilities can maintain their permitted throughput.

Commissioner Reeder stated that when he left the September meeting, he was under the impression the test had to run for eight hours at 90% capacity.

Ms. Schumacher clarified that wasn't the case. Each was only required to run for one hour each, for a total of three hours.

Commissioner Reeder also stated he believed the facility would have to dump \$100,000 worth of oil.

Ms. Schumacher explained that testing protocols outside the scope of NSPS require 90-minute runs. Therefore, from start to finish, the total run time could be up to eight hours for all three systems. After further research, the Division found the facility was only required to perform three, one-hour runs.

Commissioner Reeder asked if the confusion regarding the three-hour run-time was clarified following the meeting.

Ms. Schumacher confirmed it was.

Ms. Grover told the Commission that was why they were attending the current meeting; to clarify the timing issue.

Mr. Tucker stated that they were unable to speak to the general impression following the September

meeting, but could attest that the requirement for the three, one-hour tests is outlined in federal regulations.

Mr. Robertson affirmed the misunderstanding was cleared up following the September meeting.

Mr. McNulty admitted that he was the one who recommended an eight-hour run because he feels it provides better, more consistent data than the shorter runs.

Mr. Reck reiterated the logistical issues and the impact running the tests had on the job scheduled for that day.

Commissioner Goicoechea agreed with Commissioner Reeder that he too, thought there would be quite a lot of output produced and that was why he supported the motion for the Division to recalculate the penalty and work with the facility to complete the testing. He noted the number of times 90% was mentioned during the previous meeting, further asserting the universal belief of what was required of the facility. He also thanked the Division for working with Reck Brothers as requested.

Chairman Porta closed the hearing to allow for additional discussion by the Commission. He then asked the Division to confirm the revised of \$12,000.

Ms. Grover stated they updated the Findings of Fact and Conclusions of Law with the \$12,000 based on what the Division was asked to do. However, they stand by the original penalty of \$24,000.

Chairman Porta stated that the Commission did not specifically request the penalty be revised even though it states that in the Findings of Fact.

Ms. Grover explained that after listening to the September meeting's audio, she believed the Division was asked to reduce the penalty based on the number of days.

Commissioner Landreth recalled her comments from the last meeting did not advocate a reduced penalty but rather difficulties smaller businesses have with maintaining compliance. Unless there is a problem with the matrix, she stands by the Division's \$24,000 recommendation.

Commissioner KC agreed with Commissioner Goicoechea with the frequency at which 90% was mentioned during the September meeting. She also restated the original question posed by the Commission which was should the Division consider reducing the permitted throughput amount because it seemed unnecessary to have it set so high.

Mr. Robertson elaborated on the facility's thought process and how they based their permitted amount on an assumption of what the 20-year-old, refurbished plant would be capable of producing at their location's altitude.

Commissioner KC brought the discussion back to the fact that the company has been in business for 40 years and should have enough data available to get properly permitted for the smaller plant. Even though statute allows the Commission to make a different determination, she also stood by the penalty calculated by using the matrix.

Commissioner Sullivan recalled at the end of September's hearing, there was an implicit understanding that the Division was to consider reducing the penalty amount despite the fact the penalty matrix had been used accurately and appropriately. He asked if the current justification for the reduction was based on the facility's completion of the testing and willingness to bring itself back into compliance.

Mr. Tucker explained the reduced penalty amount provided was an option for the Commission to consider and was based on the impression that the determination reached by the Division was incorrect. He further explained the penalty matrix allows a minimal number of things to be taken into consideration including the number of tests, the type of penalty being pursued, how much time has passed since the test should have occurred, and the number of systems. He noted the potential penalty matrix calculation could have been as

much as \$114,000. However, the Division proposed a penalty of \$24,000. The only option available to further reduce the amount would be to assess a penalty for failing to test only one of the systems instead of two.

Commissioner Sullivan asked if the facility completed the necessary tests since the September meeting.

Mr. Tucker said Reck Brothers only tested one system.

Chairman Porta proposed a fine of \$24,000 but half to be paid in the form of a supplemental environmental project (SEP) agreed on by both the Division and Reck Brothers to help the small business mitigate the cash output over time if need be.

Commissioner Mudd asked if that had been done in the past.

Commissioner Ghiglieri said that it had been done and that he thought it was a great idea because it invests in the Ely area and helps prevent potential environmental impacts.

Mr. Robertson asked for clarification on the type of project. Would it be improvements to the plant or the community?

Chairman Porta affirmed it would be for the community itself.

Commissioner Goicoechea said since it has been done previously, he believes it is feasible to do in this case.

Commissioner Landreth asked for further clarification on whether it could either be improvements to the plant or community environmental rehabilitation.

Chairman Porta explained the facility would have to do something within the community like rehabilitating wetlands, planting trees, or whatever the Division and the company agree upon. It would not involve improving the plant itself.

Commissioner Landreth said she supported the suggestion.

Commissioner Smith stated he also liked the recommendation.

Commissioner Sullivan asked if the facility would propose an idea to NDEP for them to approve.

Chairman Porta said yes but the Division can also assist with recommendations of things that can be done.

Commissioner Ghiglieri asked if the Division has the staff, time, and resources to help facilitate this.

Mr. Tucker said hopefully they can accommodate them.

Chairman Porta stated he knows it will not be easy and will require the two to work together, devoting some resources to accomplish it. However, he felt it was the fairest to all the companies that have come before the Commission to work through the process and achieve a fair resolution all are seeking.

Commissioner Goicoechea brought the discussion back to the underlying issue of what needs to be done moving forward to avoid this situation from happening in the future.

Commissioner Mudd agreed that some clarity is required and challenged the Division to come up with something that outlines the minutiae or breaks down the complexity of air quality permits. Doing so may help small businesses meet and maintain compliance. She also said she supported the mitigation project if it happens closest to the resources it impacts.

Chairman Porta asked for a motion.

Motion: To approve the recommended penalty for NOAV No. 2892 of \$24,000, with \$12,000 paid via an SEP within the local community to be agreed upon by both the facility and the Division along with the Findings of Fact, Conclusions of Law, and amendment for the supplemental environmental project.

By: Commissioner KC

Second: Commissioner Mudd

Vote: Motion passed unanimously

The meeting was recessed for ten minutes beginning at 10:52 am.

Regulatory Petitions

5) Permanent Regulatory Petition R061-23 - Bureau of Air Quality Planning (For Possible Action)

Mr. Tucker presented R061-23. The regulatory petition proposes to amend *Nevada Administrative Code* (NAC) Chapter 445B.22097 by adding language about notifications made by the Agency to the public about events such as wildfires, where ambient air quality standards may be exceeded and negatively affect air quality, and the potential associated health hazards. He said these air quality events are monitored by NDEP's ambient air quality monitors, providing real-time information about air quality which is made available to the public. NDEP has historically provided notifications related to these events via the website, social media, and press releases. In addition, NDEP will provide air quality forecasts for the two subsequent days via the U.S. Environmental Protection Agency website. The purpose for officially adopting these regulations would be to document the efforts in the NAC as well as satisfy the Clean Air Act requirements. If adopted, the regulations would be sent to the EPA for inclusion in the Nevada State Implementation Plan (SIP).

Chairman Porta asked if codifying these into regulation was a requirement for the SIP.

Mr. Tucker said yes.

Chairman Porta also asked if Washoe and Clark Counties have similar regulations.

Mr. Tucker said that Clark County does, and Washoe County is working on adding these to their SIP.

Seeing no public comment, Chairman Porta asked for a motion.

Motion: To approve permanent regulatory petition R061-23 as proposed by NDEP.

By: Commissioner KC

Second: Commissioner Goicoechea

Vote: Motion passed unanimously

6) Permanent Regulatory Petition R062-23 - Bureau of Air Quality Planning (For Possible Action)

Mr. Tucker presented R062-23. As a result of Governor Lombardo's Executive Order 2023-003, which directed state agencies to review regulations subject to their enforcement and identify those that could be streamlined, clarified, reduced, or otherwise improved, this proposal is to repeal the regulations for the administration and enforcement of the Alternative Fuels Program codified inclusively in NAC 486A.010 to 486A.250. Senate Bill (S.B.) 42 from the 80th Legislative Session repealed *Nevada Revised Statutes* (NRS) 4868.010 to 4868.200 providing statutory authority to administer the Alternative Fuels Program. Repealing these regulations would result in consistency between the regulatory requirements and statutory authority. He noted no public comments were received during the workshop held on September 28, 2023.

Chairman Porta asked if removing these regulations from Clark and Washoe Counties SIPs has had an adverse effect.

Mr. Tucker responded that the regulations were adopted to address a need at that time. However, that need no longer exists because the underlying statutory authority to administer the program doesn't.

Chairman Porta noted their use to credit their counties for emission reductions. He also confirmed the State Legislature did repeal the regulations.

Seeing no public comment, Chairman Porta asked for a motion.

Motion: To approve permanent regulatory petition R062-23 as proposed by NDEP.

By: Commissioner Ghiglieri

Second: Commissioner KC

Vote: Motion passed unanimously

7) Permanent Regulatory Petition R075-23 - Bureau of Air Quality Planning (For Possible Action)

Ms. Schumacher presented R075-23. This proposal is also the result of Executive Order 2023-003. The Chemical Accident Prevention Program (CAPP) that is within the Bureau of Air Pollution Control is proposing to revise NAC 459.953451 to remove the requirement of submitting two copies of an application to the Division. Facilities subject to the CAPP submit applications to begin the permitting process to authorize construction for a new or modified process. The two application copies are no longer needed since most of the work is performed electronically. Revising this regulation would help reduce the use of and need to store paper, improve efficiency, and minimize expenditures.

Chairman Porta then asked for public comment and, seeing none, brought the matter back to the Commission for a motion.

Motion: To adopt the permanent regulatory petition R075-23 as proposed by NDEP.

By: Commissioner Goicoechea

Second: Commissioner Landreth

Vote: Motion passed unanimously

8) Permanent Regulatory Petition R130-23 - Bureau of Safe Drinking Water (For Possible Action)

Chairman Porta recused himself from voting on this item because of a personal relationship with one of the state lab directors.

Andrea Seifert, Chief, and Jasmine Curiel, Laboratory Certification Program Supervisor, of the Bureau of Safe Drinking Water (BSDW) jointly presented R130-23.

Ms. Seifert provided the Commission background on the structure and purpose of BSDW. She went into depth on Nevada's Laboratory Certification Program (LCP), including its goal and methods for protecting the health and safety of Nevadans. Ms. Seifert summarized the proposed regulation to increase the fees for the Division's environmental Laboratory Certification Program and why it is important. She then explained the factors behind the proposed fee increase. The LCP was designed to be fee-based and the last increase occurred in January 2004. As program costs have increased, BSDW has relied heavily on reserves and federal grants to support expenses. Ms. Seifert further explained inflation plays a large role since it has risen approximately 66% in the past 20 years. As a result, costs for travel to conduct inspections and train new staff have increased due to high turnover rates. In addition, BSDW is expanding its use of electronic tools to increase productivity and decrease reliance on paper records. This means there are more costs associated with the purchase and maintenance of electronic software and hardware. She also noted the proposed cost increase also accounts for state staff salary increases approved during the 2023 Legislative Session.

Ms. Curiel stated BSDW has been in communication with the regulated community since July 2022 regarding the process for the proposed amendments. The methods included several email announcements and two public workshops. She explained the goal of the first workshop held in December 2022 was to take the regulations to the State Environmental Commission in January of 2023. But, per the Executive Order issued

on January 12, 2023, the regulations were put on hold, providing BSDW an opportunity to further review the Legislative Council Bureau (LCB) proposed regulations and modify them as necessary. This process involved “greenlining” the regulations to match the current fee structure and invoicing system.

Ms. Curiel explained BSDW’s process for greenlining the proposed LCB regulations. Regarding the general cleanup section to NAC 445A, she said BSDW proposes updates to certain regulations referencing the Department of Health and Human Services, Division of Public and Behavioral Health, Bureau of Licensure and Certification; Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, BSDW; and Board of Health to the State Environmental Commission. In addition, the proposed regulations will modify the regulations related to current versions of reference publications, update prices and sources for various reference publications, and add other reference publications. They will also update references to specific sections in various documents to match the correct regulating authority and avoid confusion in the regulated community. These proposed revisions can be found in Sections 1, 4-15, 17, 19, and 20.

Ms. Curiel detailed the factors of the proposed fee structure and a regulation stating the fee increases will go into effect on August 1st of each year, the beginning of the annual certification period. She outlined the schedule for increases for 2024 through 2028 and said the revisions can be found in Sections 3, 16, and 18. Ms. Curiel provided a breakdown and comparison of the current reserve versus expenses. She noted if the proposed regulation is not approved, the LCP will have no reserves at the start of fiscal year 2026 (July 2025). Ms. Curiel stated BSDW has a goal to maintain one year of cash in reserves and, based on the projections, the proposed fee increase will provide for a one-year reserve in 2030. She also said the increases are needed to sustain the program and regulatory requirements to ensure the LCP is fully funded while maintaining the goal of one year of expenses in reserves. At that point, the 3% increase may be reviewed annually to balance budget needs.

Chairman Porta asked for questions from the Commission.

Commissioner Mudd mentioned there were no references to the analytes in the documents provided, only fees.

Ms. Seifert stated between the historical and current versions, some analytes were added to the list to reflect more current analytes necessary to meet regulatory requirements.

Commissioner Sullivan commented that he appreciated BSDW’s thorough explanation and presentation.

Chairman Porta opened the hearing for public comment.

Michael Perry, Laboratory Q.A. Officer, Southern Nevada Water Authority, supports the proposed fee increases, stating they are appropriate for the state’s LCP and align with other states.

With no further public comment, Chairman Porta called for a motion.

Motion: To approve the permanent regulatory petition R130-23 as proposed by NDEP.

By: Commissioner Landreth

Second: Commissioner KC

Vote: Motion passed unanimously (Chairman Porta abstained from the vote due to a personal conflict with the item presented.)

Administrator’s Briefing to the Commission

9) Discussion

Jennifer Carr, Administrator, NDEP, noted two recent promotions within the Division. Andrew Tucker and

Annalyn Settelmeier, now Chief for BAQP and Bureau of Sustainable Materials Management, respectively. She then briefly described the Supplemental Environmental Policy Program (SEP). It was established for the exact reason it was used today; to bring a fair resolution to the Reck Brothers violation. Ms. Carr explained the SEP is not intended to be used for anything related to the facility's compliance itself, but rather for projects within and to better the state. These include opportunities with the Divisions of Forestry and State Parks or something to rectify the environmental harm done to the impacted media within their geographical location. Another possibility is to designate the funds for the Environmental Quality Improvement Account. That way, the Department can aggregate smaller fines and penalties into a larger project.

Commissioner Goicoechea asked if you combined the \$12,000 from the Reck Brothers, could it then be applied to an area other than Northeast Nevada?

Ms. Carr said yes, that is a possibility. For example, funds from several previous penalties still need to be utilized for the Nevada Sagebrush Ecosystem Program, which is currently awaiting sufficient resources to move forward.

Commissioner Sullivan asked how much of the redistributed funds go to environmental projects versus the school districts.

Ms. Carr said fines and penalties from the air program used to go to the county school district in which the violation occurred. However, the State Legislature changed that several sessions ago. The fines and penalties now go to the Education Stabilization Account while any non-specified fines and penalties go to the State General Fund.

Next, Ms. Carr discussed R109-22, a regulation amendment that added service fees to the Drinking Water State Revolving Fund. Per the Commission's request, she provided an update on its status and said a total of \$3,000 has been collected, explaining the low amount is due largely to an abnormally low demand for traditional loan program dollars, creating a shortfall in cash projections. Ms. Carr added staff is continuing to evaluate the fee structure against the long-term sustainability of the program. She noted the types of projects the funds were used for and explained the difficulties the program is experiencing moving funds due to the vast amount of free federal funds available.

Ms. Carr lastly provided the Commission background on the various Bureaus within the Division, including their function, key statistics, successes, challenges, and opportunities.

Public Comments

10) Public Comments

There were no public comments.

Adjournment

11) Adjournment

Chairman Porta asked for a motion to adjourn.

Motion: To adjourn at 12:03 pm

By: Commissioner Goicoechea

Second: Commissioner Sullivan

Vote: Motion passed unanimously

The audio recording of this meeting is available at https://sec.nv.gov/uploads/mtg_1223/SEC-120523.mp3