

STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

February 14, 2012

**Re: Notice of Response to Comments
Class I Operating Permit to Construct AP1041-2761
Plum Mining Company, LLC (FIN A0404)**

Dear Commenter:

The State of Nevada Division of Environmental Protection - Bureau of Air Pollution Control (NBAPC) is providing notice of its response to comments on the proposed Class I Operating Permit to Construct (OPTC), AP1041-2761, for Plum Mining Company, LLC. The response document includes the BAPC's responses to all persons who commented (and left contact information) on the proposed Class I OPTC, AP1041-2761.

The NBAPC is also announcing issuance of Class I OPTC AP1041-2761 to Plum Mining Company, LLC. The permit and support documents are available upon request. If you have any questions, please call the NBAPC at 775-687-9349.

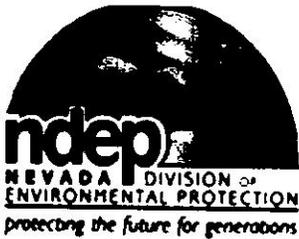
An appeal of the issuance of Class I OPTC AP1041-2761 may be requested pursuant to **Nevada Revised Statutes (NRS) 445B.360** and State Environmental Commission (SEC) administrative rules. Appeals must be received within 10 days of receipt of this notice, pursuant to **NRS 445B.340**. Appeals are processed through John Walker, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mr. Walker can be reached at 775-687-9308, or by fax at 775-687-5856.

Thank you,

Lawrence Kennedy
Chief
Bureau of Air Pollution Control

Enclosure – Response to Comments





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RESPONSE TO COMMENTS, PLUM MINING PUBLIC NOTICE AND PUBLIC HEARING

February 14, 2012

Introduction

On December 21, 2011, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP-BAPC) submitted notices to the Reno Gazette-Journal and the Comstock Chronicle regarding proposed issuance of a Class I Operating Permit to Construct to the Plum Mining Company, LLC (Plum Mining). Plum Mining is a Nevada limited liability company, wholly owned by Comstock Mining, Inc (Comstock).

A copy of the proposed permit was made available for public viewing and inspection at the Storey County Public Library. The NDEP-BACP also held a public hearing in Carson City on January 26, 2012, to discuss the proposed action, and solicit public comment. Written and verbal comments were received through the date of the hearing.

Background

This specific project proposed by Plum Mining has been regulated by the NDEP since 2001 and is currently in temporary closure status. Plum Mining is in the process of applying for the necessary permits to construct and operate equipment that will support new mining activities at the property formerly known as the Billie the Kid/Hartford Hill Project Mine, located south of Virginia City in Storey County.

The NDEP is aware that this project is adjacent to and may disturb lands associated with the Carson River Mercury Site (CRMS). The CRMS was designated in 1990 by the U.S. Environmental Protection Agency (EPA) as a federal superfund site and was placed on the National Priorities List (NPL). In 1995, EPA issued a Record of Decision (ROD) that governs clean-up in specific residential areas based on established thresholds or clean-up standards that are protective of public health. Properties located within the CRMS are subject to the requirements of a Long Term Sampling and Response Plan (LTSRP) developed by the NDEP-BCA in conjunction with EPA Region 9. The site is managed by NDEP, with EPA oversight, under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Clean-up activities at the superfund site are an on-going process and will continue until remediation is completed. The goal of the superfund designation is not to limit recreational, occupational or residential activities within the risk boundary. The goal is to regulate them so

activities do not threaten or cause a release of hazardous substances while returning the land to a productive status.

NDEP has two oversight roles: one is to manage the CRMS portion of the site, and the other responsibility is to manage the proposed mining projects. The Bureau of Corrective Actions (BCA) primary duty is to oversee the CRMS portion of the site. The Bureau of Mining Regulation and Reclamation (BMRR) and the Bureau of Air Pollution Control (BAPC) are responsible for regulating the project.

As mentioned, the NDEP-BCA is the lead authority regarding the “superfund,” or National Priorities Listing (NPL) portion of this site. The NDEP understands residents’ concerns regarding the disturbance of contaminated soils at the site. To address these concerns, the NDEP-BCA, EPA Region 9 and Comstock recently agreed upon a Sampling and Analysis Plan (SAP), which requires Comstock to assess any of the historic mining wastes that the company may disturb. The ultimate goal of the SAP is to characterize disturbances that may occur as part of mining operations and to verify if they rise to the clean-up threshold for any of the contaminants. The company will be required to undertake appropriate remediation should analysis indicate that mercury, arsenic or lead occur in concentrations at or above the established clean-up thresholds. This is a unique opportunity for the NDEP to address clean up at the superfund site, while safely allowing mining activities.

The NDEP-BMRR is responsible for enforcing provisions of a reclamation permit and a water pollution control permit. The reclamation permit regulates reclamation of the disturbed land after mining is completed. Besides approving a reclamation plan which must return land to a productive post-mining land use, a financial surety is put in place to ensure that any reclamation activities do not become the financial responsibility of the state. These bonds are reviewed annually for the life of the project to ensure they will meet any and all financial obligations. As part of this project, the previously mentioned SAP has been incorporated into the reclamation permit as a permit condition.

The Water Pollution Control permit that is in place, is a zero discharge permit that protects and ensures that the waters of the state are not degraded. Process components have been designed and constructed with leak detection systems. The ponds are double-lined and the heap leach pad has a composite liner requirement. A groundwater monitoring network is in place to provide another layer of protection. Further, waste rock characterization is done to ensure proper handling of mined materials.

The proposed action by the NDEP-BAPC regulates the control of air emissions, and this is being accomplished in two ways. In July 2011 the NDEP-BAPC issued a Phase II Mercury Operating Permit to Construct to Plum Mining to address the regulatory requirements of the Nevada Mercury Control Program. The Class I Operating Permit to Construct addresses the regulatory requirements and standards of other air quality programs, including the federal New Source Performance Standards and National Emission Standard for Hazardous Air Pollutants. Within one year of the start of operation, Plum Mining must submit an application for a Class I Air Quality Operating Permit that will contain provisions for direct federal enforcement under Title V of the Clean Air Act.

As part of the process for reviewing the BAPC-Class I Operating Permit to Construct (OPTC) we received public comment that have some underlying concerns, which we will address below. Those concerns include addressing permitting, enforcement, superfund issues, and hazardous waste oversight.

General Comments

We received comments that the NDEP was allowing mining activities to occur without proper oversight or permitting. As described above, the NDEP has been regulating this project since 2000. There was a previously issued Class II Air Quality Operating Permit issued in August of 2000 to Plum Mining. There has been a reclamation permit in place from NDEP-BMRR since 2001, and NDEP-BAPC recently issued a Phase II Mercury Operating Permit to Construct.

The NDEP has taken enforcement actions when necessary to uphold the conditions of the permits. In 2006, NDEP-BAPC issued a Notice of Alleged Air Quality Violation and Order, regarding installing equipment that was not previously listed in their permit. The order requested that a permit modification be submitted to account for all processing systems. Once this was completed, NDEP determined the company was in compliance.

In May 2011, NDEP-BWPC issued a Cease and Desist Order to Comstock for failing to obtain a waterways permit from the NDEP prior to commencing construction in a waterway. The Order required Comstock to remove dirt and rock that was placed in the waterway, NDEP subsequently verified that Comstock had complied with this request. There is no other history of violations with NDEP and the company is currently in compliance with all environmental programs administered by NDEP.

Given the multiple permits in place and the multiple bureaus regulating this project, as mentioned in the introduction, NDEP believes that all required permitting and oversight has been and continues to be in place for this project.

NDEP received multiple responses from individuals who are concerned over allowing mining activities near or as part of a federally designated superfund site. NDEP understands these concerns and is taking steps to ensure that clean-up efforts of the site are enhanced through this process and not compromised. First, it should be understood that the federal law mentioned above, CERCLA which governs remediation activities in the federally designated area, does not prohibit re-use of a NPL listed site. The law does require that re-use take place in a manner that does not compromise the integrity and protectiveness of the clean-up activities.

NDEP is taking steps to ensure that clean-up activities are not compromised and to address potential impacts to public health. As mentioned in the introduction, the required Sampling and Analysis Plan (SAP) is in place to ensure that soils that are encountered in the CRMS are handled in a manner that is protective of public health. A soil characterization must be done *prior* to any mining activities being undertaken in the CRMS boundary, and proper remediation must be completed if the company encounters soils that are above established thresholds that pose a potential threat to public health.

The NDEP received comments where it was believed that this mine will create hazardous waste and therefore should be regulated under the Resource Conservation and Recovery Act (RCRA). The reason why RCRA regulations do not apply to this site are complicated, but we will attempt to explain them as succinctly as possible.

First, EPA determined in 1995 that any waste from the CRMS is exempted from the RCRA requirements as they are for the beneficiation and extraction of ores and minerals. This is codified in the Record of Decision (ROD) on the CRMS. This exemption was provided given that RCRA authority does not provide additional oversight advantage and the material is simply not a hazardous waste. These exemptions apply to waste even it is moved, transported or placed in another location.

Again, the bottom line is RCRA regulation is not required nor needed as the mine waste is subject to the Beville amendment and does not fall under hazardous waste regulations under RCRA. There is sufficient regulation in place to ensure protection of public health and the environment. There has been no evidence provided to EPA or NDEP that these determinations are incorrect.

NDEP-BAPC will address the comments received that are specific to the Class I OPTC below.

Response to Specific Comments

Written Comment No. 1 – Letter dated January 26, 2012

“Great Basin Resource Watch has only one brief comment on this Class I air permit. It is our understanding that there maybe some materials to be processed at the pending permitted facilities sourced from areas which are part of the Carson River Mercury Superfund site (CRMS). Many of these areas have to be fully characterized for the contaminant of concern (COC), which EPA has identified as mercury, lead, and arsenic. GBRW is concerned about the additional air quality impact (health concern) that could result from processing ores that contain increased amounts of these metals. Dust and collected dust (in baghouses) could contain elevated levels of COCs, which could pose an increased risk to workers and residents in the area. In addition, baghouse filters, etc. may need to be treated as hazardous waste.

GBRW therefore recommends that sampling and analysis of materials sourced in the CRMS and destined for processing be conducted prior to processing, so that an evaluation of risks can be evaluated. If elevated levels of COCs exist then a mitigation plan will need to be developed to avoid health impacts to the workers and nearby residents, and include the proper disposal of contaminated filters, etc.”

NDEP-BAPC Response:

The NDEP-BAPC evaluated the impact of processing ore in making its preliminary determination to issue Class I Operating Permit to Construct (OPTC) AP1041-2761; the Permit does not allow for the crushing, screening or conveying of contaminated material. As previously described, the NDEP-BCA and EPA recently approved Comstock’s Sampling and Analysis Plan (SAP), which requires Comstock or Plum Mining to characterize any historic mill or tailings waste that the company plans on disturbing. If any of this material contains mercury, arsenic or lead at concentrations at or above the significant action level, Comstock Mining will be required to take appropriate remedial measures. The NDEP-BAPC understands that Plum Mining has begun to

sample and analyze some historic mining materials, but that the company is still in the process of developing a plan for handling any material that may be contaminated.

Bedrock represents the source of ore for the mining project and does not require risk assessment for environmental contamination. The three CRMS contaminants of concern are regulated by the EPA as hazardous air pollutants. Neither Plum Mining nor any of the operating mines in Nevada has the potential to emit hazardous air pollutants - either singly or in combination - at levels subject to regulation as a major source. Facilities with the potential to emit hazardous air pollutants at lower levels are referred to as "area sources."

The draft LTSRP issued by the NDEP-BCA and EPA in December 2011 identified mercury as the primary contaminant of concern. In recent years mercury emissions from thermal processes at precious metal mining operations have come under increased regulatory scrutiny. In February 2011, EPA promulgated a National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Gold Mine Ore Processing and Production Area Sources to address mercury emissions from these sources; Plum Mining and most other gold mines in Nevada are subject to this rule. In addition, Plum Mining and most other Nevada mines are subject to regulation under the Nevada Mercury Control Program, which imposes mercury emission standards on a unit-by-unit basis. In July 2011, the NDEP-BAPC issued Phase II Mercury Operating Permit to Construct (Mercury OPTC) AP1041-2690 to Plum Mining. As described in our response to Written Comment 2.2, Phase II Mercury OPTC AP1041-2690 and proposed Class I OPTC AP1041-2761 require that mercury emissions shall be controlled using state-of-the-art emission controls. The NDEP-BAPC believes that the requirements of these permits shall be sufficient to address the expressed concerns.

Written Comment No. 2 – Letter dated January 26, 2012

"We would like to comment on the Class I Air Quality Operating Permit applied for by Plum Mining We object to the issuance of this permit on the following grounds.

1. NDEP is currently requiring a comprehensive SAP and management plan to identify the possible contamination of soils by mercury, lead and arsenic. The Gold Canyon / American Flat area has been mined, without controls, in an area heavily populated with legacy mill tailing piles, for over 10 years. We don't know what the environmental consequences of those, unregulated, activities are. As residents of adjoining communities we are MOST concerned about airborne Contaminants of Concern (CoC's). This permit should not be issued until the entire area in question has been sampled for CoC's, as required by the NDEP SAP.

2. This permit has no substantive monitoring provisions. We think that an active air monitoring program needs to be established as a permit condition. We want to know, on an ongoing independent basis, what is in the air we breathe. This would require air monitoring in Gold Canyon, Silver City, American Flat and the Divide, at the top of Gold Canyon The intense winds in Gold Canyon have distributed dust from this mining operation to our dining room tables, we want to know what's in that dust.

3. Both NDEP and EPA have failed in their duty to protect the residents of the Comstock. This mining operation has disturbed legacy mill tailings and, therefore, has made Goldspring/Plum/Comstock Mining a generator of hazardous waste and subject to the Resource Conservation and Recovery Act (RCRA). This activity is not excluded under the Bevel Amendment. Any further mining activity requires appropriate RCRA permits. The air quality permits can be addressed in a RCRA permit. The lack of

RCRA permits violates 42 USC 6904 et seq . and NRS 459.465 et seq. and until the RCRA permit issues have been addressed and resolved , puts all recently issued permits in question.”

NDEP-BAPC Response to Comment 2.1:

Please see our response to Written Comment 1 regarding the SAP and airborne contaminants of concern. The NDEP does not agree with the assertion that that the “*area has been mined, without controls, in an area heavily populated with legacy mill tailing piles, or over 10 years.*” As described in our response to the verbal comment, the mining operations conducted over the last ten years have been appropriately permitted, and the NDEP has enforced the permit conditions and other regulatory requirements.

NDEP-BAPC Response to Comment 2.2:

The comment asserts that there is a need for *ambient* air quality monitoring; the draft OPTC contains robust provisions for other forms of monitoring. Ambient air quality monitoring is conducted to represent the quality of the air to which the public has access, for comparison with the air quality standard established for a specific pollutant. To ensure that the data is meaningful, a monitoring station must be properly sited to ensure that the data collected is representative of the area being evaluated; to do so, monitors must be located in accordance with recognized and approved criteria. As described below, the NDEP-BAPC believes that ambient monitoring for fine particulate matter (“PM₁₀”) is not necessary. There is no ambient air quality standard for mercury.

The proposed Class I Operating Permit to Construct relies on a variety of pollutant emission controls and permit conditions to ensure that the mine shall comply with all applicable air quality standards and regulations. Water sprays, cyclones, and baghouses are installed on various systems to control fugitive dust, opacity and emissions of particulate matter. All of the permitted systems are subject to monitoring, recordkeeping and reporting requirements.

As noted previously, mercury emissions are addressed by two separate regulatory programs: the Nevada Mercury Control Program, and the Federal NESHAP for Gold Mine Ore Processing and Production Area Sources [40 CFR Part 63, Subpart EEEEEEE]. Phase II Mercury OPTC AP1041-2690 and Class I OPTC AP1041-2761 require that mercury emissions from thermal units in the refinery be controlled using state-of-the-art emission controls, with a sulfur-impregnated deep bed carbon scrubber as the ultimate control device. In addition to sampling, monitoring, recordkeeping and reporting requirements, the refinery units must comply with sampling requirements and rigorous work practice standards, and must verify compliance with mercury emission limits through emission testing.

NDEP-BAPC Response to Comment 2.3:

Please refer to our overview of the issues related to the CRMS site and permitting actions relevant to the proposed mining project. Some of your concerns are also addressed in our response to Written Comment 1. The NDEP-BAPC has no independent authority to regulate hazardous waste.

Verbal Comment – received during January 26, 2012 Hearing

"My name is Daan Eggenberger. I'm affiliated with Friends of the Comstock, an organization that's kind of dedicated to preserving the environmental integrity of the Comstock. The thing that just jumps out -- I wrote a letter today that I will read to you because I get off track easily. The thing that jumps out to me here is there has not been a single mention of the fact that this operation is taking place in the Carson River Mercury Super Fund Site.

The Carson River Mercury Super Fund Site is the only national titled super fund site in the State of Nevada. There's a reason for that. There's 15 million pounds of missing mercury in the environment. In this wonderful presentation if this were out in Elko or Newmont, this would be terrific. We would all just be kind of letting it go by. This is in a very close canyon environment with tremendous amounts of environmental problems.

This mining company that has been mining in this area -- I better go to my letter. Thank you for giving me the opportunity to speak to you today. I'm representing Friends of the Comstock, the grass roots environmental organization dedicated to the environmental integrity of the Comstock. We are here to object to the issuance of the air quality permit of Plum Mining in its present form. As you know, this permit affects the Carson River Mercury Site, a national priority super fund site, the only one in the State of Nevada.

There are a number of cross-connected environmental issues facing this area: Possible contaminated air, water, soil. These contaminants of mercury, lead and arsenic are the main contaminants that we're worried about right now. These shouldn't be looked at independently.

According to NDEP, there are 15 million pounds of missing mercury from the Carson River Mercury Super Fund Site. Currently, there are archeological studies at NDEP. According to NDEP, there are 15 million pounds of missing mercury. Much of this material was left in waste piles from historic milling practices. Comstock and its predecessors have been mining in the area heavily populated with these legacy mines and mill sites. The mining has been allowed without adequate permitting and without controls. CMI and Plum and Gold Spring previous to that knowingly and willfully handled materials with serious toxic problems without the proper permits.

The permits -- The basic permit that should have been issued in 2000 comes under the Resource Conservation and Recovery Act, RCRA, which permits a company to handle hazardous waste. These mill and mine tailing sites are heavily contaminated. They have been spread throughout the entire area of Gold Canyon.

As a result of citizen involvement, NDEP has acknowledged the serious scope of surface mining in an area contaminated with toxic materials and located in the middle of residential areas. With a flurry of new rules for reclamation permits they are requiring CMI, Plum, Gold Springs to perform what appears to be a rigorous sampling of analysis plants. This goes a long way and is a great first step towards a true picture of what has happened in Gold Canyon and American Flat.

We feel that issuing this permit prior to completion of the soil sampling and analysis plan is premature. We request that any air permit has a same sampling and analysis plan requirement. As a community our biggest fear is that the dust that blows around this mining and milling operation in Gold Canyon and American Flat is contaminated with toxic and unhealthy materials. The record of decision speaks to children eating contaminated dirt, but there is no mention of contaminated particulates. There are five recent cases of lung cancer in Gold Canyon. We are concerned.

I have had numerous conversations with Glen Miller who is an internationally recognized expert on mercury contamination. My last one with him was yesterday, at which time as we were talking about the

disbursement of mercury in to the environment, he said to me, "We don't know. We don't know what the effects are here." And then he said, "And they don't know either," and they being NDEP. You don't know. You don't know what's happening with the 15 million pounds of mercury that's being dispersed through our environment in Gold Canyon next to residential areas. NDEP does not know. You have modeling on the mine project that should be out in the middle of Nevada, not in one of the most heavily contaminated areas.

There are large issues here. We feel this company has violated numerous environmental laws including the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act. When the true scope of the contamination in Gold Canyon, Gold Creek Drainage and America Flat comes to light in this company, this company will become we hope a principal responsible party in a super, super fund site clean-up. I think once Gold Creek drainage is tested, everybody is going to wake up.

In the meantime, we urge caution in granting any further permits. We request studies of air disposition through high volume testing, not modeling. Testing. Throughout Silver City, Gold Hill and Virginia City. And that this testing is comprehensive and includes testing for all the contaminants of concern on an ongoing and weekly basis, not a kind of a hypothetical modeling this is probably what's going to happen. We want it on the ground next to our houses, in the canyon, in the residential areas, next to the hotels, next to people's, you know, where they raise their children. We are concerned that particulate matter is transporting mercury to our homes and our lungs.

And as I said, Glen Miller, international recognized mercury expert said, "We don't know. We don't know." And you don't know. NDEP does not know. Given that this is a super fund side, none of this, this wonderful presentation, this one or any of the other presentations for the -- mentioned that this is a super fund site. It's not a super fund site because it was a fun little exercise. It's a super fund site because there's a serious toxic problem here.

Air sampling, not modeling, sampling should be a requirement of any permit. We want to know what's in the air, the soil and the water. There's some handbooks I'm just briefly going to. EPA, NDEP have a wonderful website with amazing amounts of information. One of the handbooks coordination, and I'll only read a couple of the sentences. One of the biggest lessons everyone who works with air deposition learns is a degree to which the air and water environments are connected. So the air quality program isn't just air. It relates to the soil. It relates to the water shed. It relates to the Gold Creek drainage. So this is not a separate air permit. This is a permit that affects the water and the soil.

Now, our biggest lesson is that the air deposition learns that the degree to which air and water environments are connected in a mercury super fund site. Deposition monitoring, there are only a handful of ways to measure atmospheric deposition. Which one you choose depends to a large extent on what questions need to be answered, what needs to be measured, what assumptions the advisory group is most comfortable with and the resources available.

So I think the measuring of contaminants be in place our requirement of any air permit beforehand, not after. Not at the end of the year when they do a toxic release inventory. But this is an ongoing weekly, monthly, independently verified monitoring program that's serious. Now, we have a good sampling program. NDEP has come up with a great sampling program that is going to give us a good sense of if we really have a problem or if we're just hysterical, you know, not-in-my-backyard neighborhood people. The sampling plan goes a long ways to answering -- will go a long ways to answering a lot of these questions.

Gold Creek drainage has been completely screwed up by this company over the last ten years. And I think when that really gets sampled and analyzed, there's going to be some serious issues there. It's a water

way that feeds the Carson River. It's federally protected. And I think they're going to have some serious problems with that.

So again, I will end this in the same way that I started it, which is we just had a presentation, a wonderful air quality presentation from NDEP that not once mentioned that this is happening in a federally protected super fund site, the Carson River mercury site.

And what this does is -- In closing, in the last ten years there has been a complete lack of proper permitting for these operations. And I'm not a conspiracy buff, but what I'm watching NDEP do right now is cover up ten years of malfeasance of regulatory failures. I talked to Paul Komba in the early days of this and he looked me in the face and when I said, "Well, did you guys look? Where in the permits, where was the mercury, Carson River Mercury Super Fund?" He said, "Oh, it was in there."

I went through each permit. The Carson River Mercury Super Fund Site was never mentioned in any of the permits in the last ten years. So there needs to be a historical analysis of what happened in the last ten years, what the environmental effects of those ten years have been and where we're going with this. This air quality is part of it.

But again, there needs to be an honest monitoring system. These companies have not been honest. And thank you very much."

NDEP-BAPC Response to Verbal Comment:

The speaker read from a letter that provided written comments regarding the location of the proposed project within the CRMS site, and the characterization, sampling, and handling of materials within the site; the alleged lack of "substantive monitoring provisions" in the proposed permit; and the writer's belief that the mining company should be required to obtain a RCRA permit. The NDEP responded to those three written comments above. The speaker made several other assertions in his verbal comments that require a response.

The speaker asserts that, "There are a number of cross-connected environmental issues facing this area: Possible contaminated air, water, soil. These contaminants of mercury, lead and arsenic are the main contaminants that we're worried about right now. These shouldn't be looked at independently."

The NDEP-BAPC understands the concern expressed by the commenter. However, the different media (in this example air, water, and contamination of soils) are assessed and regulated through different regulatory programs to ensure that the assessments are done appropriately. For example, the criteria for obtaining a representative sample of air are very different from those related to the sampling of water or contaminated soils. The NDEP-BAPC and other air quality programs rely on emission control technologies and other permit conditions to ensure that facilities comply with applicable regulations and standards to protect public health and the environment. EPA's regulation of toxic air pollutants under Section 112 of the Clean Air Act through the NESHAP and MACT programs address the potential for cumulative impacts from air toxics.

The speaker also asserts that the NDEP failed to appropriately permit operations in the area and covered up a long history of non-compliance by the company. Quoting from various parts of the statement, the speaker asserts that mining by Comstock and its predecessors "has been allowed

without adequate permitting and without controls. CMI and Plum and Gold Spring previous to that knowingly and willfully handled materials with serious toxic problems without the proper permits.... We feel that this company has violated numerous environmental laws including the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act... in the last ten years there has been a complete lack of proper permitting for these operations. And I'm not a conspiracy buff, but what I'm watching NDEP do right now is cover up ten years of malfeasance of regulatory failures."

The NDEP believes that the mining operations conducted over the last ten years have been appropriately permitted, and that the agency has undertaken the actions necessary to enforce permit conditions and other regulatory requirements. In August 2000, the NDEP-BAPC issued Plum Mining a Class II Air Quality Operating Permit (no. AP1041-0936) for a crushing, screening, and agglomeration plant that would be used to process gold and silver ore for heap leaching in the future. Permit AP1041-0936 was renewed in 2005 and modified several times in 2004 - 2008 to accommodate new equipment, but expired in July 2010. The NDEP-Bureau of Mining Regulation and Reclamation (NDEP-BMRR) issued a reclamation permit for the Billie the Kid Mine in 2001. As previously noted, in July 2011 the NDEP-BAPC issued a Phase II Mercury Operating Permit to Construct to Plum Mining to address regulatory requirements of the Nevada Mercury Control Program.

The NDEP has taken enforcement actions regarding two violations, identified by the NDEP-BAPC and the NDEP-Bureau of Water Pollution Control. In 2006, the NDEP-BAPC issued a Notice of Alleged Air Quality Violation and Order (NOAV) to Plum Mining for installing a crusher and bringing several conveyors not listed in Permit AP1041-0936 onto the site. NOAV No. 2060 required that Plum Mining apply for a modification to Permit A1041-0936 to ensure that all the equipment in its processing systems was appropriately permitted. Because of several mitigating factors, the NDEP-BAPC issued NOAV No. 2060 as a Warning.

In May 2011, the NDEP-BWPC issued a Cease and Desist Order to Comstock for failing to obtain a waterways permit from the NDEP before commencing construction in a waterway. The Order required that Comstock remove the dirt and rock placed in the waterway; in June 2011, the NDEP-BWPC confirmed that Comstock had complied with the Order and released the company from its requirements.

No other Bureau in the NDEP has issued a violation to Comstock or its subsidiary, Plum Mining. The companies addressed the enforcement actions taken by the NDEP-BAPC and NDEP-BWPC in a timely manner, and are currently in compliance with the environmental programs administered by the NDEP.

Conclusion

Based upon its review of and responses to the comments provided, the NDEP-BAPC is issuing Class I Operating Permit to Construct AP-1041-2761 to Plum Mining.