



STATE OF NEVADA

Department of Conservation & Natural Resources

Jim Gibbons, Governor

Allen Biaggi, Director

DIVISION OF ENVIRONMENTAL PROTECTION

Leo M. Drozdoff, P.E., Administrator

April 1, 2010

NOTICE OF DECISION

PERMIT NUMBER NEV2009509

ENCORE ENERGY, INC.

BANGO OIL, LLC

The Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control (BWPC) has decided to issue the State of Nevada Groundwater Permit NEV2009509. This permit authorizes an oil-removal treatment works to generate, store and reclaim treated effluent for dust control, landscape irrigation, plant makeup water and fire supply at the Bango Oil, LLC in Fallon, Churchill County Nevada. Sufficient information has been provided, in accordance with Nevada Administrative Code (NAC) 445A.228 through NAC 445A.263, to assure the BWPC that the waters of the State will not be degraded from this operation and that public safety and health will be protected.

This permit will become effective April 1, 2010. The final determination may be appealed to the State Environmental Commission pursuant to Nevada Revised Statutes (NRS) 445A.605. The appeal must be requested within ten (10) days of the date of this notice of decision and in accordance with the administrative rules of the Commission.

**RESPONSE TO PUBLIC COMMENT FROM
PUBLIC HEARING IN FALLON, NV ON DECEMBER 2, 2009**

Sharon Boone

1.1

Comment: *Has the Bango Oil monitoring well been drilled yet?*

Response: No, the facility is awaiting the Notice of Decision (NOD) and final action on the BWPC discharge permit.

1.2

Comment: *Has NDEP reviewed the design of the wastewater treatment works design?*

Response: Yes, BWPC has reviewed the submitted oil-removal treatment works design and then conducted a site review of the treatment works while it was under construction.

1.3

Comment: *Has Bango Oil submitted an Operations and Maintenance (O&M) Manual or Effluent Management Plan (EMP)?*

Response: Yes. BWPC received a draft O&M Manual in the permit application. A final O&M and EMP are required ninety days after startup of the oil-removal treatment works.

1.4

Comment: *When the salts build up in the soil, how long does it take to cause sterilization of the soil?*

Response: Applied in accordance with the permit conditions, this discharge will not present adverse environmental impact to the environment. The primary point of application for dust control is on its unpaved pole-line road, which travels between the processing facility and the rail spur turnout at the northwest property corner. NDEP noted a travel distance of approximately one-half mile. The permittee reuse plan also incorporates drip irrigation of perimeter landscape (bushes and small trees), which will be planted around the fenced processing facility.

1.5

Comment: *What repercussion would there be for a discharge to the Carson River?*

Response: This permit does not allow for a discharge into the Carson River. Violations of permit conditions will be processed through BWPC's Compliance and Enforcement Branch as applicable.

1.6

Comment: *The permit indicates that less than 1,000 gallons per day of discharge will be generated, but, the permit allows for 14,000 gallons per day. It would seem prudent to evaluate the environmental impacts at the limit of the permit. Has this been done?*

Response: After consideration of the public comments and The permittee's facility requirements, BWPC will permit a two-tiered discharge rate of 1,100 GPD of effluent (Phase 1, 30-day average) and 3,100 GPD of effluent (Phase 2, 30-day average). The daily maximum discharge rate is 4,000 GPD (daily maximum), Phase 1 or 2. The Phase 2 discharge flow limit will not go into effect in the permit issued by BWPC until Churchill County approves the amended Special Use Permit (SUP). Any additional effluent generated by the permittee in excess of the BWPC limits must be reused internally or shipped offsite to a third-party facility.

1.7

Comment: *Other contaminants such as zinc should be considered. Are you (NDEP) in the process of doing this?*

Response: Yes. Zinc and other metals will be monitored according to the permit.

1.8

Comment: *Xylenes ecological information states that when released into the soil this material is expected to leach into groundwater. This would seem like a big deal to me. What about the NDEP?*

Response: Xylenes (Total) will be monitored along with other BTEX parameters (Benzene, Toluene, and Ethylbenzene). The permit limits for BTEX are equivalent to or more stringent than the State and Federal drinking water standards, which take into a health-based risk assessment for these parameters.

1.9

Comment: *Is Bango Oil a RCRA approved facility?*

Response: No. The NDEP Bureau of Waste Management (BWM) has issued a Written Determination to Bango Oil limited to the recycling of used oil and recycled fuel oil that may be designated as hazardous waste in their state of origin (i.e., California regulated "waste oil"), but are not regulated as hazardous waste as defined by 40 CFR 261.

1.10

Comment: *Will they be saturating one acre or many acres? Later tonight? After you go back and do research?*

Response: No, the permittee will not be saturating the soil. See response to comment 1.4

1.11

Comment: *Which, Chemical Oxygen Demand (COD) test did Bango Oil use?*

Response: During construction of the oil-removal treatment works, the permittee conducted a preliminary test of the Dissolved Air Flotation (DAF) unit using an EPA Method 410.4 / SM5220D test for COD.

1.12

Comment: *How do they propose to measure when the clay filters are in need of changing?*

Response: Replacement of all spent treatment media, including organo-clay, carbon and bag filters, will be based on the process monitoring (e.g., breakthrough monitoring) of parameters such as effluent quality and monitoring of vessel pressure buildup as oil globules collect on the treatment media surface. The main assurance of proper O&M in this permit comes from the requirement that each tank load must be tested and verified for compliance prior to discharge.

1.13

Comment: *What do you propose to do about ethylene glycol analysis?*

Response: The permit requires quarterly testing of the effluent and annual testing of the groundwater for ethylene glycol (antifreeze) presence.

1.14

Comment: *Are you prepared to take the real and effective measures to stay on top of this to assure us that all is well in our neighborhood?*

Response: Yes, for the permit BWPC requires quarterly data submission in the Discharge Monitoring Reports and will conduct periodic site inspections, which may also include independent verification of the effluent quality by NDEP's contracted, State-certified laboratory. The permittee must also use a state-certified laboratory to process its samples.

Randy Redinger

2.1

Comment: *What is Bango Oil's storage capacity?*

Response: The application indicates a non-potable water storage capacity at Bango Oil of (3) 25,000 gallon tanks (75,000 gallons) plus an emergency fire water storage tank.

Lorraine Griffin

3.1

Comment: *A letter dated March 9, 2009, from McGinley & Associates and it states that the groundwater at the Bango site is in excess of 70 feet below ground surface. Yet the groundwater discharge application on page three which I believe is the official statement of groundwater states that by Bango Oil, this was entered by Bango Oil I guess, shows a depth to groundwater of 240 feet below ground surface. This is an obvious misrepresentation of fact. The well drillers report permit number 71713 shows the static water level in Bango's onsite well is 53 feet below ground surface. So I'm wondering which figures you're going to use and why would NDEP allow that erroneous statement?*

Response: The two nearest wells in proximity to the Bango Oil facility is its own supply well (53 ft. depth to the static water level) and a well installed in 1967 for the Diatamatics Corp., which had formerly operated as a railroad load-out siding (70 ft. depth to the static water level). NDEP verified that the depth to groundwater in this latter well that was referenced in the permit application is correct, and therefore, description of both of these wells included in the amended Fact Sheet to clarify the data provided in the applicant's permit application.

3.2

Comment: What is a shallow water bearing unit?

Response: A shallow water bearing unit referenced in the permit application is a playa depression located southeast of the Bango Oil facility where its consultant, McGinley & Associates, had sampled a standing water puddle located on the land surface. This sample from a standing puddle is not representative of the underlying groundwater.

3.3

Comment: *Bango Oil is located directly down gradient from the Truckee canal which contains standing, surface standing water year round. Mary Duggan's property, Mary is here tonight, is also down gradient from the canal. It's located to the southwest less than a mile from Bango Oil. She has a hand dug 16 ft. well that has supplied her domestic water for at least 25 years. Where does Mary Duggan's drinking water come from?*

Response: Mary Duggan's drinking water well appears to be from a hand-dug well constructed to a depth of 16 ft. and likely recharged from incident precipitation, canal (Truckee Carson Irrigation District) and reservoir (Lahontan) seepage and flood-irrigation of surrounding farmland during the growing season.

3.4

Comment: *Where do all the other shallow wells in the area get their water?*

Response: Shallow supply wells appear to receive their water supply from the unconfined aquifer, which is recharged from precipitation, canal and reservoir seepage and flood-irrigation.

3.5

Comment: *Isn't it the responsibility of NDEP to protect the drinking water?*

Response: Yes, this permit holds the applicant to the established drinking water and NDEP treatment standards.

3.6

Comment: *Why is this application seeking to approve 14,000 gallons a day?*

Response: See response to comment 1.6.

3.7

Comment: *What is to stop them from bringing in oily water from outside sources?*

Response: NDEP does not establish the locations from where the permittee can receive its used oil. If discharge requirements are exceeded, violations will be processed through BWPC's Compliance and Enforcement Branch as applicable.

3.8

Comment: *Is Bango Oil's intention to take in oily water from off site sources in order to fully utilize the capacity of their water treatment plant? Why wouldn't they?*

Response: See response to comment 3.7.

3.9

Comment: *This would of course require a special use permit from the county. But if they already have a permit approved by NDEP it would undermine the counties authority and rob the citizens of Churchill County to their right to due process. The information from the applicant appears to be conflicting at best. I would like to suggest that this application be returned for clarification. How can you make a decision as important as this one with inaccurate or insufficient data? I thank you.*

Response: Churchill County's approval of its Special Use Permit for this operation will not be undermined by NDEP's determination. Should Churchill County elect to remove the Special Use Permit from the permittee, NDEP's permit would be non-functional.

Vito Quilici

4.1

Comment: *I ask you please look into it do not grant the permit make them hold heir own effluent and cart it out someplace else.*

Response: BWPC notes your comment.

Jim Osborne

5.1

Comment: *I ask where does 14,000 gallons of water come from.*

Response: See response to comment 1.6.

5.2

Comment: *Why are they having 1,000 gallons per day from the normal processing of oil and requesting a permit for 14,000?*

Response: See response to comment 1.6.

5.3

Comment: *We went through this with the county commission and they sent this back to your office I believe, rejecting it. Is that not true? And everybody is, somebody, or nobody is considering giving them this? Or is this something that's depending on what we talk about tonight?*

Response: Prior to the Public Hearing, BWPC received application # TNEV2009465 for a temporary discharge permit from the permittee. After consideration, BWPC denied this temporary permit due in part to the degree of public interest or concern with the Permittee's facility. This denial decision would allow one consolidated public hearing for the permittee's proposed reuse, at which time all public comments would be gathered by BWPC. If Churchill County acts on the request to expand the SUP capacity to 62,000 gallons per day of used oil, this permit would allow Bango Oil to discharge at a higher Phase 2 flow limits of 3,100 (30-day Average) / 4,000 (Daily maximum) gallons per day. If Churchill County does not approve the amended SUP, the lower Phase 1 flow limits of 1,100 / 4,000 GPD would apply.

5.4

Comment: *Where is this water coming from?*

Response: Bango Oil's process wastewater is generated from used oil recycling, pad wash-down water, accumulation in plant sumps and floor drains and periodic blow-down from two cooling tower units. The moisture impurity in the incoming used oil accumulates from sources such as moisture condensation in used oil collection vessels, combustion (automotive) engine operation, and incident precipitation inflow into the used oil collection vessels. NDEP's information shows that used oil contains approximately 3.5% moisture content by volume with a contract limit to its suppliers to provide used oil $\leq 5\%$. Plant data indicated that the highest moisture content processed in one load within the last year was approximately 7.5% moisture. However, the average moisture content is still indicated to be 3.5%.

Stuart Mackie

6.1

Comment: *Do you have the permitting and the pump verifications and things of the pumps that were never put in, that were never measured?*

Response: BWPC does not regulate Water rights or set allocation limits. This is the first BWPC discharge permit that is being issued to Bango Oil.

6.2

Comment: *What ever happened to the last two years?*

Response: Process wastewater is being transported to an Oregon facility.

6.3

Comment: *It's my understanding that they didn't bother even telling you guys what they were pumping, how much of what, where it was going, anything and there were no pumps, no meters, nothing until about a month ago. Then something was added where, what are you going to charge them with for this two years of what they've done?*

Response: This is the first BWPC discharge permit that is being issued to Bango Oil.

6.4

Comment: *Then something was added where, what are you going to charge them with for this two years of what they've done. Because I know that's what you're supposed to be doing. And I was wondering when is this going to happen? Before or after you do this permitting?*

Response: See response to Comment 6.3.

6.5

Comment: *I believe that you first need to identify what water they've already put on there; they've been doing it for two years and as far as I know there is no record whatsoever. And I would love to see that; that's something that should have been done two years ago up to this date. I believe it was a requirement for them to even exist yet it was never put in. So, you need to fire somebody or you need to fine them, one or the other. Do you have those permits?*

Response: See response to Comment 6.3. When the permit is issued, the permittee will be required to report each and every quarter for the permit duration. When the Discharge Monitoring Reports (DMRs) are filed, they will be available upon request for public inspection or duplication.

6.6

Comment: *Do you know of any numbers or anything that they had before this date?*

Response: No. The amount of water used by Bango Oil from its groundwater supply well or the TCID canal for domestic and industrial purposes is neither limited by nor required to be reported to NDEP.

6.9

Comment: *Did they have a permit before?*

Response: No, See response to Comment 6.3.

6.10

Comment: *Did they have a meter that they were supposed to have? Where did it go?*

Response: For the purposes of this NDEP-BWPC discharge permit, i.e., NEV2009509, a flow measurement device will be required to track the throughput through the oil removal treatment works. Also, any effluent discharged to the water truck or drip-irrigation system will have to be recorded.

Donna Jerman

7.1

Comment: *We can't ask questions or they won't get answered until another meeting?*

Response: The purpose of this Public Hearing was to gather additional public comment and questions regarding this permit application. All responses and determinations will be documented in this Notice of Decision (NOD). A mailing list has been compiled during the two comment periods (i.e., temporary and five-year permit applications) and public hearing. A Notice of Decision (NOD) will be sent to those mailing addresses that are available or provided.

7.2

Comment: *Why are we doing another permit?*

Response: Prior to the Public Hearing, BWPC received application # TNEV2009465 for a temporary discharge permit from the permittee. After consideration, BWPC denied this temporary permit due in part to the degree of public interest with the Permittee's facility. This denial decision would allow one consolidated public hearing for the permittee's proposed reuse, at which time all public comments would be gathered by BWPC.

7.3

Comment: *So I'm not quite sure what the meeting here is about tonight; that this is a new permit?*

Response: See response to comment 7.1.

7.4

Comment: *And what, they're starting over at square one, wanting us to all to say welcome to the neighborhood?*

Response: See response to Comment 7.1.

Rich Wideman

8.1

Comment: *Is benzene an aromatic hydrocarbon?*

Response: Yes. Benzene is an aromatic hydrocarbon.

8.2

Comment: Are toluene and xylenes aromatic hydrocarbons?

Response: Yes, these compounds are also aromatic hydrocarbons.

8.3

Comment: *I'd like to know why is there a public hearing?*

Response: See response to comment 7.1.

8.4

Comment: *Why is this decision being...why are we here having a public hearing on this, are you going to issue an edict after this public hearing; yea or nay?*

Response: See response to comment 7.1. The Notice of Decision will indicate NDEP's permit and response to public comments received.

8.5

Comment: Do you need to have a public hearing to say no to these people?

Response: No. See response to comment 7.1.

8.6

Comment: *Are you just appeasing us?*

Response: No. See response to comment 7.1.

8.7

Comment: *Do you have to have a public meeting to say no? I'd like to have an answer to that question. Can you answer that now?*

Response: No. See response to comment 7.1.

8.8

Comment: *But, you don't have to have one to say no?*

Comment: No, See response to comment 7.1.

8.9

Comment: *Is there any independent monitoring plan, independent monitoring, not by Bango, but independent, for this so called discharge?*

Response: Yes, NDEP will conduct announced or unannounced facility inspections and obtain effluent samples.

8.10

Comment: *Your organization sir has not protected us one iota. It's, it's shocking. Now is it apathy? Is it incompetence? Or, is it corruption?*

Response: NDEP protects against adverse environmental impact by addressing information received from the permit application process and taking into account many areas of concern. Some of these areas would include, effluent limits, method of treatment, location of discharge, volume allowed, as well as, application rates and types. The proposed effluent limits meet the allowable State discharge standards.

Brad Goetsch

9.1

Comment: *One is the disposal of effluent into lined independently monitored evaporation ponds as an alternative to surface application was suggested and was supported by Churchill County, NDEP Water Control and Bango Oil themselves. Yet, NDEP Air Control seemed to have vetoed this alternative even from being looked at without any justification; I would like you to look at that for us please.*

Response: To address the communities concern of odors, BWPC elected not to require the installation of an evaporation pond.

9.2

Comment: *But the county asked as strongly as possible that the concerns of our citizens, Nevada citizens and this Nevada community be carefully and fully considered and appropriately responded to.*

Response: See response to comment 8.10.

Don Mello

10.1

Comment: *Why would you give a permit for 14,000 gallons of waste water, you know, when they are only producing 750?*

Response: See response to comment 1.6.

10.2

Comment: *My question is with this permit are they allowed to bring dirty water in from other counties, other states, run it through their treatment plant and then pour onto the ground?*

Response: The permit application and associated conditions are for the discharge of treated effluent to the locations discussed in NDEP's response to comment 1.4. NDEP does not establish the locations from where the permittee can receive its used oil. For discharge rate limitations, please see response to comment 1.6. Should Churchill County elect to remove the Special Use Permit from the permittee, NDEP's permit would be non-functional.

10.3

Comment: *And the big concern that I see there is if it does soak in what are we going to do about it?*

Response: The permittee will not be saturating the soil. See response to comment 1.4

10.4

Comment: *If Bango wants to discharge effluent on their property, this is one of the questions that I had, this is more of a question; it says that if they want to put effluent water off of their own property that they have to get written permission from NDEP. My question is, would that be another hearing or does NDEP just say well yeah you can just start pouring water anyplace you want out there because they own 80 acres they bought it from Newmont Mine.*

Response: The primary point of application for dust control is on its unpaved pole-line road, which travels between the processing facility and the rail spur turnout at the northwest property corner. NDEP noted a travel distance of approximately one-half mile. The permittee reuse plan also incorporates drip irrigation of perimeter landscape (bushes and small trees), which will be planted around the fenced processing facility.

10.5

Comment: *Newmont Mine owns 640 acres around them. So, they can team up with Newmont. My question is would there another hearing, for the pouring of discharge treated water on the ground without a hearing?*

Response: The permit application and associated conditions are for the discharge of treated effluent to the locations discussed in NDEP's response to comment 1.4.

10.6

Comment: *Can someone in NDEP explain to me why it wouldn't be better to put a lined pond in to, that way you can actually see what's going on rather than, you know, hide it in the ground?*

Response: See previous response to Comment 9.1.

10.7

Comment: *Who's going to be responsible for first of all, the clean up, the testing and proving that it's Bango Oil?*

Response: The permittee is the responsible party for maintaining compliance with all permit conditions.

10.8

Comment: *We're miles and miles away from a public water system what happens when our wells go to hell in a hand basket?*

Response: See response to comment 10.7.

10.9

Comment: *Do we haul water in; do we require NDEP to provide a water system? Do we come to the county and cry to them? What do we do?*

Response: See response to comment 10.7.

10.10

Comment: *But we're a small group out there and we don't have the money that it takes, I mean, you know if I told you that you could save your house if you come up with a hundred thousand dollars what are you going to do? You're going to come up with the hundred thousand or are you going to bite the bullet and lose the hundred thousand on your house?*

Response: Churchill County has jurisdiction in issues related to zoning. Should Churchill County elect to remove the Special Use Permit from the permittee, NDEP's permit to Bango Oil would be non-functional.

Bill Erb

11.1

Comment: *Why is Bango Oil any different than the University of Nevada, Fire Academy in Carlin?*

Response: The Bango Oil treatment facility is designed to remove Total Petroleum Hydrocarbon (TPH) levels to one part per million (1 ppm). This treatment level to 1 ppm of TPH allows beneficial reuse. The UNR Fire Academy facility is not as effective in TPH removal and permitted by NDEP to 100 ppm TPH requiring total containment of the effluent .

11.2

Comment: *Why can't they put in a containment system, let the water go into a pond, a lined pond and the water evaporate off any of the fuels or whatever's left they take it, they put it in a truck, they haul it to California and they burn it?*

Response: NDEP permits wastewater treatment facilities to treat wastewater and conduct reuse programs for beneficial uses including irrigation, dust control and industrial reuse. To address the communities concern of odors, BWPC elected not to require the installation of an evaporation pond.

11.3

Comment: *What is the difference? What gives them the right to throw that crap out on the ground?*

Response: See response to Comment 11.2.

Don Mello

12.1

Comment: *Will all of us residents or all of us that signed the paperwork will all of us get a copy of the questions and answers so we not, I mean I get my little portion, somebody else gets their little portion, are we all going to get all of the questions and answers so we know the full story rather than just a small piece meal like Bango Oil has given us so far?*

Response: A mailing list has been compiled during the two comment periods (i.e., temporary and five-year permit applications) and public hearing. A Notice of Decision (NOD) will be sent to those mailing addresses that are available or provided.

12.2

Comment: *Will this come out before the decision is made or after?*

Response: The NOD will be available after NDEP makes its determination. NDEP will prepare a NOD and in that NOD it would state whether the permit is approved or not approved. Then it will become available by mail distribution and also internet posting.

12.3

Comment: *How will this Notice of Decision (NOD) be distributed?*

Response: See response to Comment 12.1 and 12.2.

Nona McFarland

13.1

Comment: *We would like to have the respect from your department that before you pass this permit that we have another public hearing and you first answer all of the concerns and questions that you've heard here tonight.*

Response: All responses and determinations will be documented in this Notice of Decision (NOD). A mailing list has been compiled during the two comment periods (i.e., temporary and five-year permit applications) and public hearing. A Notice of Decision (NOD) will be sent to those mailing addresses that are available or provided.

13.2

Comment: *How is it fair that you only get to hear our side and we don't get to hear from you?*

Response: See response to comment 13.1.

13.3

Comment: *Would you be willing to have another public hearing and explain to us when you've looked into the pertinent questions that have been asked why you would decide one way or the other?*

Response: See response to Comment 13.1.

13.4

Comment: *Can we have a copy of the information that you got for this permit?*

Response: Yes, NDEP's records are public information. Arrangements can be made with our Carson City Office to view or copy the files.

13.5

Comment: *I would like to know if you would have another public hearing to give us a chance to hear your side of it before you sign on the dotted line for this company that has not been a good neighbor; that has lied to this community, and has cost us hundreds of thousands of dollars?*

Response: See response to Comment 13.1.

Dave Jerman

14.1

Comment: *You've got the fox watching the hen house. You know? It's wrong.*

Response: BWPC discharge permits require a sampling and monitoring program at the Permittee's expense. As the permit conditions dictate, this will require verification by a certified laboratory prior to each tank load discharged. This sampling program will be verified by BWPC with independent sampling at a Nevada certified laboratory.

Steve Nelson

15.1

Comment: *I want a guarantee that this isn't going to harm my kids. Are you going to give it to us?*

Response: Applied in accordance with the permit conditions, this discharge will not present adverse environmental impact to the environment or public health.

15.2

Comment: *Is your company or your group or whatever you guys are going to give us that guarantee?*

Response: See response to Comment 15.1.

15.3

Comment: *Do you guys care?*

Response: Yes, BWPC does care. This facility has thus far complied with its BAPC Order, with BWPC, constructed an oil-removal treatment works, and has applied for a discharge permit. At the stated effluent limits and monitoring frequency, BWPC believes this permit is consistent with Nevada's requirements and is protective of the environment and the health of our citizens.