



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

MARCH 23, 2011

NOTICE OF DECISION

PERMIT NUMBER NEV2004528

NEWMONT NEVADA ENERGY INVESTMENT LLC

TS POWER PLANT

The Nevada Division of Environmental Protection (NDEP), Bureau of Water Pollution Control (BWPC) has decided to issue (renew) for a five-year duration the State of Nevada (NEV) Discharge Permit NEV2004528. This permit authorizes discharges of process wastewater into four double-lined (HDPE) evaporation ponds and is designed as a zero-discharge facility. This permit allows the evaporation pond effluent to be applied onsite and offsite by water truck application for dust control subject to the permit conditions. The Permittee operates the TS Power Plant (242 megawatts), which is located 3 miles north of the Dunphy I-80 Interchange (Exit #254) in Eureka 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 8, 2011**. The final determination may be appealed to the State Environmental Commission (SEC) 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 (SEC).

RESPONSE TO PUBLIC COMMENTS

John Whalen – E-Mail and Comment Letter (Both Dated March 8, 2011)

Comment 1: **E-mail and Letter:** Mr. Whalen requests a hearing on the renewal of Permit #NEV2004528.

Response 1: In accordance with NAC 445A.238, Request for public hearing, the Director has determined that there is not significant public interest for granting this request.

Comment 2: **E-mail and Letter:** Mr. Whalen believes the public and NDEP need to have an opportunity to review the plant's past operating and reporting violations as they relate to the permit renewal.

Response 2: Information relating to the permit is available as public record. Through the development of this permit, a review of NDEP records, files, reports, and other submitted documents, the public has had and continues to have an opportunity to review the plant's past operating and reporting violations as they relate to the permit renewal. Mr. Whalen has previously expressed these same concerns on several occasions. For each of the concerns expressed, NDEP has reviewed and determined that no formal enforcement action would be taken, at that time.

Comment 3: **E-Mail:** Mr. Whalen states: "The plant has the same management team that oversaw, failed to report, and allowed the permit violations 2006 through 2009, and I was harassed and fired from the plant for reporting and trying to get numerous issues addressed. The same atmosphere of complicity and collaboration in hiding and not reporting violations may still exist."

Response 3: Mr. Whalen has previously expressed these concerns on several occasions. For each of the concerns expressed, NDEP has reviewed and determined that no further action enforcement action would be taken. Additionally, on May 7, 2010 (Attachment), NDEP provided a letter that outlined the conclusions reached by NDEP through its investigation of TS Power. The allegations were itemized chronologically with the investigation activities and conclusions addressed immediately thereafter.

Comment 4: **E-Mail and Letter:** Mr. Whalen requested copies of:

- The original permit #NEV2004528 for TS Power Plant
- The Operations Manual for the plant as referred to in the permit.
- Copies of all spill reports filed by the plant since start-up
- Copies of plant reports on waste discharge to the evaporation ponds”

Response 4: NDEP has prepared and transmitted all information to his mailing address.

Comment 5: **E-Mail:** Mr. Whalen states: “I immediately became aware that plant discharge volume monitoring equipment did not work and that the plant was reporting falsified information to government entities on plant waste discharges.”

Response 5: See response 3 to comment 3.

Comment 6: **E-Mail:** Mr. Whalen states: “I discussed with Norm Duperron (Power Plant Manager), Dennis Laybourn (Newmont Environmental Manager), and Kuda Mutama (Engineering Manager) that reporting false information was a serious violation of the environmental permit. I recommended that management notify NDEP of the problem, and that the plant do whatever it took to bring monitoring equipment into compliance as quickly as possible. My comments and recommendations were received negatively and no immediate action was taken.”

Response 6: See response 3 to comment 3.

Comment 7: **E-Mail:** Mr. Whalen states: “In July of 2009 I witnessed and became aware of numerous other ongoing discharge violations and brought these to the attention of Dennis Laybourn and Kuda Mutama, as well as plant operations and supervisory personnel. I also reported a major chemical waste spill, and was harassed and told "we don't report those things" by plant management. I also had numerous discussions with Kuda Mutama and one formal meeting with Kuda Mutama and Norm Duperron where ongoing permit violations were identified and discussed. The plant's response was to recommend I stop reporting spills and that the plant had determined none of the violations were reportable.”

Response 7: See response 3 to comment 3.

Comment 8: **E-Mail:** Mr. Whalen states: “After regular attempts to get plant Management to address ongoing violations and begin following Operations Manual and Permit requirements, I was fired on November 18, 2009 without counseling or warning. My attempts to have NDEP investigate and act on my complaints were very frustrating, and resulted in the NDEP acknowledging that violations occurred, including submittal of false information, but no fines were levied.”

Response 8: See response 3 to comment 3.

Comment 9: **E-Mail:** Mr. Whalen stated that he has supplied NDEP with a significant amount of testimony, information, and photos up to this point, and would be happy to re-supply any material that NDEP might like to review.

Response 9: See response 3 to comment 3.

Comment 10: **Letter:** Mr. Whalen stated that he was “employed at TS Power Plant from March 2009 to November 2009 as part of the Engineering Group, and witnessed numerous permit and environmental violations occur on the plant site. I was harassed and coerced by management and co-workers not to report violations and to accept them as “non-reportable”.”

Response 10: See response 3 to comment 3.

Comment 11: Letter: Mr. Whalen stated that he has “photographic evidence of numerous violations, and a review of plant, reports, plant logs, and e-mails will document a pattern of violation, non-reporting, and submittal of falsified data.”

Response 11: See response 3 to comment 3.
