

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

August 30, 2012

Jared Blumenfeld
Regional Administrator
U.S. EPA Region IX, ORA-1
75 Hawthorne Street
San Francisco, CA 94105

RE: Revisions to Nevada's Clean Air Act § 110(a)(2) State Implementation Plan Submittals

Dear Mr. Blumenfeld:

On behalf of Governor Sandoval, as his appointed designee, the Nevada Division of Environmental Protection (NDEP) is submitting a revision to the previous Nevada Clean Air Act (CAA) § 110 (a)(2) state plan submittals listed below:

- February 1, 2008 submittal, *CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone, (1997 NAAQS)*;
- February 26, 2008 submittal, *CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM_{2.5}, (1997 NAAQS)*;
- September 15, 2009 submittal, *CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM_{2.5}, (2006 NAAQS)*;
- December 4, 2009 submittal, *Current CAA 110(a)(2) Requirements in the Washoe County's Portion of the Nevada PM_{2.5} SIP, (2006 NAAQS)*;
- October 15, 2011 submittal, (1) *The NDEP Portion of the Nevada Plan to Meet the Infrastructure SIP Requirements of the Clean Air Act for the 2008 Lead NAAQS* and (2) *The Washoe County Portion of the Nevada State Implementation Plan to Meet the Lead Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2)*.

On August 3, 2012, the U.S. Environmental Protection Agency (USEPA) proposed action on four of these five plans under the parallel processing mechanism provided by 40 CFR part 51, appendix V, section 2.3, as requested by the NDEP in its July 5, 2012 submittal. Today's submittal fulfills the NDEP's commitment to submit the final adopted CAA § 110(a)(2) revisions with evidence of public notice by the end of August 2012.

The NDEP requests that the USEPA apply any and all provisions that may provide support from this submittal to future USEPA actions on CAA § 110(a)(2) requirements for all NAAQS pollutants, and that generally as provisions in Nevada's applicable SIP are replaced or removed through subsequent USEPA approvals of SIP revisions submitted by the NDEP, USEPA also replace or remove those provisions in this submittal and all of Nevada's CAA § 110(a)(2) SIPs.

One hard copy and one exact duplicate of the hard copy in electronic form of Nevada's SIP revisions are enclosed. Evidence of compliance with the required consultation and public review processes is also enclosed. Washoe County is submitting five existing Washoe County District Board of Health regulations for adoption into the Nevada applicable SIP (see attached letter from Kevin Dick to Colleen Cripps). The comment period for this revision opened on May 25, 2012 and the public hearing was held on June 28, 2012, whereupon the Washoe County District Board of Health adopted the Washoe SIP revision.

The NDEP's revision package includes updates to existing SIP provisions, statutes for adoption into the applicable SIP and clarifications. The public comment period for the NDEP's revision package opened July 13, 2012 with opportunity for a public hearing on August 15, 2012. Based on Nevada Revised Statutes 445B.205 and Nevada Administrative Code 445B.053, the Administrator of the NDEP has the authority to adopt and submit state implementation plans to the USEPA. I thereby adopt the NDEP's § 110(a)(2) SIP revisions and request approval of this submittal into the applicable Nevada SIP.

If you have any questions, please feel free to contact me at (775) 687-9301, Mike Elges, Deputy Administrator at (775) 687-9416 or Rob Bamford, Chief of the Bureau of Air Quality Planning at (775) 687-9330.

Sincerely,



Colleen Cripps
Colleen Cripps, Ph.D.
Administrator

Enclosures

cc: w/o enclosures

Dale Erquiaga, Senior Advisor, Office of the Governor
Amy Zimpfer, Associate Director, EPA Region IX, Air Division
Rory Mays, Planning Office, EPA Region IX, Air Division
Jefferson Wehling, Air Attorneys (ORC-2), EPA Region IX

ec: w/o enclosures

Leo Drozdoff, Director, DCNR
Michael Elges, Deputy Administrator, NDEP
Rob Bamford, Chief, Bureau of Air Quality Planning, NDEP

Certified Mail No. 9171 9690 0935 0011 9021 47

NOTICE OF PUBLIC COMMENT PERIOD BEGINNING JULY 13, 2012 AND A PUBLIC HEARING ON AUGUST 15, 2012, IF REQUESTED

Conducted by the
Nevada Division of Environmental Protection
Bureau of Air Quality Planning

Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice.

The NDEP is proposing to revise and clarify Nevada's existing Clean Air Act (CAA) § 110(a)(2) state plan submittals (listed below). These revisions/clarifications will be submitted to the U.S. Environmental Protection Agency for incorporation into the applicable Nevada state implementation plan (SIP).

- February 1, 2008 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for 8-Hour Ozone, (1997 NAAQS);
- February 26, 2008 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for PM2.5, (1997 NAAQS);
- September 15, 2009 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for PM2.5, (2006 NAAQS);
- December 4, 2009 submittal, Current CAA 110(a)(2) Requirements in the Washoe County's Portion of the Nevada PM2.5 SIP, (2006 NAAQS);
- October 15, 2011 submittal, (1) The NDEP Portion of the Nevada Plan to Meet the Infrastructure SIP Requirements of the Clean Air Act for the 2008 Lead NAAQS and (2) The Washoe County Portion of the Nevada State Implementation Plan to Meet the Lead Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2).

The NDEP has drafted revisions to Nevada's existing CAA § 110(a)(2) SIP submittals to meet the requirements of the Clean Air Act. The NDEP's proposed revisions are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft submittal may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001, Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov.

Persons wishing to comment on the proposed Nevada CAA § 110(a)(2) SIP submittals or to request a public hearing should submit their comments or request **in writing** either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. **A request for a hearing must be received by August 9, 2012. Written comments will be received by the NDEP until 5:00 PM PDT, August 15, 2012 and will be retained and considered.**

Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on:

**August 15, 2012
10:00 a.m. to 12:00 p.m.
PEBP Board Room (Suite 1002), 1st Floor
901 South Stewart Street
Carson City, Nevada**

An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the Hearing. If no request for a public hearing is received by August 9, 2012, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349.

This notice has been published in the Las Vegas Review-Journal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing.

7/11/2012

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LEGAL

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS:

Stacey M. Lewis, being 1st duly sworn, deposes and says: That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for,

NV DIVISION ENVIRONMENTAL PROTECTION 6879350DIV 8007192

was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 07/13/2012 to 07/13/2012, on the following days:

07/13/2012

NOTICE OF PUBLIC COMMENT PERIOD
Beginning July 13, 2012
and a Public Hearing On
August 15, 2012, if Requested

Conducted by the
Nevada Division of
Environmental Protection
Bureau of Air Quality Planning

Pursuant to the public hearing
requirements in Title 40 of the
Code of Federal Regulations Part
51 section 102, the Nevada
Division of Environmental
Protection (NDEP) is issuing the
following notice.

The NDEP is proposing to revise
and clarify Nevada's existing
Clean Air Act (CAA) § 110(a)(2)
state plan submittals (listed
below). These revisions/
clarifications will be submitted
to the U.S. Environmental
Protection Agency for
incorporation into the applicable
Nevada state implementation
plan (SIP).

February 1, 2009 submittal, CAA
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February 28, 2009 submittal,
CAA 110(a)(2)(A)-(M)
Requirements in the Current
Nevada SIP for PM2.5, (1997
NAAQS);
September 15, 2009 submittal,
CAA 110(a)(2)(A)-(M)
Requirements in the Current
Nevada SIP for PM2.5, (2006
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December 4, 2009 submittal,
Current CAA 110(a)(2)
Requirements in the Washoe
County's Portion of the Nevada
PM2.5 SIP, (2006 NAAQS);
October 15, 2011 submittal: (1)
The NDEP Portion of the Nevada
Plan to Meet the Infrastructure
SIP Requirements of the Clean
Air Act for the 2006 Lead NAAQS
and (2) The Washoe County
Portion of the Nevada State
Implementation Plan to Meet the
Lead Infrastructure SIP
Requirements of Clean Air Act
Section 110(a)(2).

The NDEP has drafted revisions to
Nevada's existing CAA §
110(a)(2) SIP submittals to meet
the requirements of the Clean Air
Act. The NDEP's proposed
revisions are available on the
NDEP website at
http://ndep.nv.gov/admin/public
.htm, click on "Air Quality
Planning". Access to the draft
submittals may also be obtained
by contacting Adele Malone at
NDEP, 901 S. Stewart Street, Suite
4001, Carson City, NV 89701; (775)
687-9356, or e-mail to
amalone@ndep.nv.gov.

Persons wishing to comment on
the proposed Nevada CAA §
110(a)(2) SIP submittals or to
request a public hearing should
submit their comments or
request in writing either in
person or by mail or fax to Adele
Malone at the above address or
by fax at (775) 687-9349. A
request for a hearing will be
received by August 9, 2012.
Written comments will be
received by the August 15, 2012
deadline. All comments will
be reviewed and responded.

Upon receipt of a valid written
request, the NDEP will hold a
public hearing in Carson City on:

August 15, 2012
10:00 a.m. to 12:00 p.m.
PERF Board Room (Suite 1802),
901 South Stewart Street,
Carson City, Nevada

All agendas will be posted on the
NDEP web site at least 3 working
days before the hearing. Oral
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http://ndep.nv.gov/admin/public
.htm, click on "Air Quality
Planning" or they may call the
NDEP Bureau of Air Quality
Planning at (775) 687-9349.

This notice has been published in
the Las Vegas Review-Journal
and the Las Vegas Sun, Journal
and Sun, and is also posted
in Carson City
and at the State
Library in Carson City and at
College libraries throughout
Nevada. Members of the public
who are disabled and require
special accommodations or
assistance at the meeting are
requested to notify Cathy Douglas
at (775) 687-9349
no later than 3 working days
before the hearing, 7/13/2012.

PUB: July 13, 2012
LV Review Journal

Signed: Stacey M. Lewis
SUBSCRIBED AND SWORN BEFORE ME THIS, THE

13th day of July, 2012.

Janet E. Miles
Notary Public

JANET E. MILES
Notary Public State of Nevada
No. 09-8939-1
My appt. exp. Nov. 13, 2012

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JUL 16 2012

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Nevada
Environmental Protection

JUL 16 2012

STATE OF NEVADA
COUNTY OF WASHOE

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Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **07/13/2012 - 07/13/2012**, for exact publication dates please see last line of Proof of Publication below.

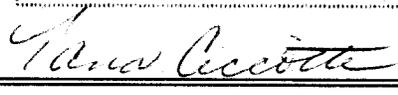
Subscribed and sworn to before me

Signed: 

Gina Briles

JUL 13 2012

 **TANA CICCOTTI**
Notary Public - State of Nevada
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NOTICE OF PUBLIC COMMENT PERIOD BEGINNING JULY 13, 2012 AND A PUBLIC HEARING ON AUGUST 15, 2012, IF REQUESTED Conducted by the Nevada Division of Environmental Protection Bureau of Air Quality Planning Pursuant to the public hearing requirements in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is issuing the following notice. The NDEP is proposing to revise and clarify Nevada's existing Clean Air Act (CAA) 110(a)(2) state plan submittals (listed below). These revisions/clarifications will be submitted to the U.S. Environmental Protection Agency for incorporation into the applicable Nevada state implementation plan (SIP). "February 1, 2008 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for 8-Hour Ozone, (1997 NAAQS); "February 26, 2008 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for PM2.5, (1997 NAAQS); "September 15, 2009 submittal, CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada SIP for PM2.5, (2006 NAAQS); "December 4, 2009 submittal, Current CAA 110(a)(2) Requirements in the Washoe County's Portion of the Nevada PM2.5 SIP, (2006 NAAQS); "October 15, 2011 submittal, (1) The NDEP Portion of the Nevada Plan to Meet the Infrastructure SIP Requirements of the Clean Air Act for the 2008 Lead NAAQS and (2) The

**NOTICE OF PUBLIC COMMENT PERIOD BEGINNING
JULY 13, 2012
AND A PUBLIC HEARING ON AUGUST 15, 2012,
IF REQUESTED**

Conducted by the
Nevada Division of Environmental Protection
Bureau of Air Quality Planning

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The NDEP has drafted revisions to Nevada's existing CAA 110(a)(2) SIP submittals to meet the requirements of the Clean Air Act. The NDEP's proposed revisions are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft submittal may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001 Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov.

Persons wishing to comment on the proposed Nevada CAA 110(a)(2) SIP submittals or to request a public hearing should submit their comments or request in writing either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. A request for a hearing must be received by August 9, 2012. Written comments will be received by the NDEP until 5:00 PM PDT, August 15, 2012 and will be retained and considered.

Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on:

August 15, 2012
10:00 a.m. to 12:00 p.m.
PEBP Board Room (Suite 1002), 1st Floor
901 South Stewart Street
Carson City, Nevada

An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the hearing. If no request for a public hearing is received by August 9, 2011, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349.

This notice has been published in the Las Vegas Review-Journal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing.

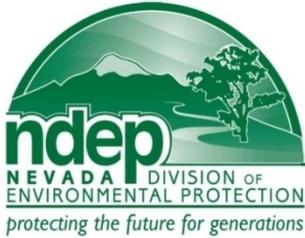
No. 783284 July 13, 2012

Nevada
Environmental Protection

JUL 16 2012

BAPC/BAQP

Washoe County Portion of the Nevada State Implementation Plan to Meet the Lead Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2). The NDEP has drafted revisions to Nevada's existing CAA 110(a)(2) SIP submittals to meet the requirements of the Clean Air Act. The NDEP's proposed revisions are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Access to the draft submittal may also be obtained by contacting Adele Malone at NDEP, 901 S. Stewart Street, Suite 4001, Carson City, NV 89701; (775) 687-9356; or e-mail to amalone@ndep.nv.gov. Persons wishing to comment on the proposed Nevada CAA 110(a)(2) SIP submittals or to request a public hearing should submit their comments or request in writing either in person or by mail or fax to Adele Malone at the above address or by fax at (775) 687-6396. A request for a hearing must be received by August 9, 2012. Written comments will be received by the NDEP until 5:00 PM PDT, August 15, 2012 and will be retained and considered. Upon receipt of a valid written request, the NDEP will hold a public hearing in Carson City on: August 15, 2012 10:00 a.m. to 12:00 p.m. PEBP Board Room (Suite 1002), 1st Floor 901 South Stewart Street Carson City, Nevada An agenda will be posted on the NDEP web site at least 3 working days before the hearing. Oral comments will be received at the Hearing. If no request for a public hearing is received by August 9, 2011, the hearing will be cancelled. Persons may check on the status of the hearing on the NDEP web site at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning," or you may call the NDEP Bureau of Air Quality Planning at (775) 687-9349. This notice has been published in the Las Vegas ReviewJournal and the Reno Gazette Journal newspapers. It has been posted at the NDEP offices in Carson City and Las Vegas, at the State Library in Carson City and at County libraries throughout Nevada. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Adele Malone or Cathy Douglas (775-687-9349) no later than 3 working days before the hearing. No. 783284 July 13, 2012



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

NOTICE OF CANCELLATION OF PUBLIC HEARING ON AUGUST 15, 2012

Nevada Division of Environmental Protection
Bureau of Air Quality Planning

Pursuant to the public hearing provisions in Title 40 of the Code of Federal Regulations Part 51 section 102, the Nevada Division of Environmental Protection (NDEP) is cancelling the following public hearing because no request for a hearing was received:

August 15, 2012
10:00 a.m. to 12:00 p.m.
PEBP Board Room (St. 1002)
901 South Stewart Street
Carson City, Nevada

The NDEP's proposed revisions to Nevada's Clean Air Act § 110(A)(2) (infrastructure) state implementation plans and related materials are available on the NDEP website at <http://ndep.nv.gov/admin/public.htm>, click on "Air Quality Planning." Persons may also check on the status of Nevada's SIP revision by telephone at (775) 687-9356.

Revisions to Nevada’s Clean Air Act Section 110(a)(2) Plan Submittals as of July 2012

August 2012

The Nevada Division of Environmental Protection (NDEP) submits the following revisions and clarifications to Nevada’s existing Clean Air Act (CAA) § 110(a)(2) state plan submittals:

- February 1, 2008 submittal, “CAA 110(a)(2)(A)-(M) Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone,” (1997 NAAQS);
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The NDEP requests that the U.S. Environmental Protection Agency (USEPA) approves these revisions into the Nevada applicable SIP.

To the greatest extent possible, the NDEP also requests that the USEPA apply any and all provisions that may provide support from this submittal to future USEPA actions on CAA § 110(a)(2) requirements for all NAAQS pollutants. The NDEP further requests that generally as statutes and regulations in Nevada’s applicable SIP are replaced or removed through subsequent USEPA approvals of SIP revisions submitted by the NDEP, USEPA also replace or remove those provisions in this submittal and all of Nevada’s CAA § 110(a)(2) SIPs.

Section 110(a) Element	Revisions to Nevada’s Existing 110(a)(2) SIP Submittals
§110(a)(2)(C)	The NDEP has full delegation of the federal prevention of significant deterioration of air quality (PSD) program (40 CFR §52.21). The NDEP maintains that 40 CFR §52.1485 (b), <i>“Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.”</i> incorporates the federal PSD provisions into the applicable Nevada SIP, thereby satisfying USEPA’s reading of the CAA to require that Nevada’s PSD program be in Nevada’s state plan.
§110(a)(2)(D)	As noted in element C above, the NDEP has full delegation of the federal PSD program, and 40 CFR § 52.1485 incorporates the provisions of § 52.21 into the applicable Nevada SIP. The consultation and public notice provisions in the applicable Nevada SIP are listed under

Section 110(a) Element	Revisions to Nevada’s Existing 110(a)(2) SIP Submittals
	elements J and M of the NDEP’s 110(a)(2) submittals (listed at the beginning of this document). Nevada’s PSD program and these provisions fully address the public notice requirements in this element.
§110(a)(2)(E)	<p>(i) The NDEP is submitting Attachment A as a SIP revision to replace Section 12, “Resources,” of the 1972 SIP. Attachment A addresses the funding and personnel requirements of this element.</p> <p>(ii): CAA § 128 requirements. The NDEP is submitting NRS 232A.020, 281A.150, 281A.160, 281A.400, 281A.410 and 281A.420 as a SIP revision (Attachment B). These rules address the disclosure of conflicts of interest requirement of this element. See NDEP’s analysis of how these provisions satisfy the requirement in Attachment C.</p>
§110(a)(2)(F)	<p>(iii): NAC 445B.315(3), submitted to USEPA on January 24, 2011, requires the holder of an operating permit to retain all required monitoring data and provides NDEP the authority to require any information necessary to determine compliance with conditions of the operating permit. NAC 445B.265 requires reporting of monitored emissions, including excess emissions. NAC 445B.252 provides the authority to require compliance testing and sampling. Compliance inspection reports correlate the reported emissions to the emission limitations in the operating permit; these reports are available on site at the NDEP offices for public inspection during business hours. Together with NAC 445B.3368 and 445B.346, submitted to USEPA on January 24, 2011, the provisions cited above satisfy the element 110(a)(2)(F)(iii) requirements for the correlation of emissions from stationary sources with any emission limitations or standards established pursuant to the CAA, and the availability of such information for public inspection.</p>
§110(a)(2)(J)	<ul style="list-style-type: none"> • CAA § 121, Consultation: The NDEP is submitting Attachment D as a SIP revision to replace Section 11, “Intergovernmental Relations,” of the 1972 SIP. Attachment D addresses the intergovernmental consultation requirements of this element. • CAA Part C, PSD: As noted under element C, the NDEP has full delegation of the federal PSD program, which is made part of Nevada’s applicable SIP per 40 CFR § 52.1485. The consultation and public notice provisions in the applicable SIP (as listed under elements J and M of the NDEP’s 110(a)(2) submittals noted at the beginning of this document) fulfill the public notice requirements of CAA Part C, subchapter I. • The NDEP is submitting the 2011 codification of NRS 445B.500 to replace the version currently included in Nevada’s applicable SIP because this statute was revised in 2011. The NDEP is also submitting NRS 445B.503, which contains provisions relevant to consultation requirements for local air agencies in counties with populations greater than 700,000, and NRS 439.390.
§110(a)(2)(K)	<p>The following NAC provisions were submitted to USEPA on January 24, 2011 as a SIP revision:</p> <ul style="list-style-type: none"> • 445B.308 Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan. • 445B.310 Environmental evaluation: Applicable sources and other subjects; exemption. • 445B.311 Environmental evaluation: Contents; consideration of good engineering practice stack height. <p>Together with Nevada’s full delegation of the federal PSD program, as adopted into the applicable Nevada SIP through 40 CFR § 52.1485 (see element C above), these regulations fully satisfy the requirements of this element.</p>

Section 110(a) Element	Revisions to Nevada’s Existing 110(a)(2) SIP Submittals
§110(a)(2)(M)	The NDEP is submitting Attachment D as a SIP revision to replace Section 11, “Intergovernmental Relations,” of the 1972 SIP. Attachment D addresses the requirements of this element for consultation and participation by local political subdivisions.

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ATTACHMENT A

AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA

Section 12 - Resources

12.0 Purpose

The purposes of this section of the Nevada State Implementation Plan (SIP) are to update and replace section 12 (“Resources”) of the Nevada SIP as approved by U.S. Environmental Protection Agency (USEPA) in 1972 [37 Fed. Reg. 10,842 (May 31, 1972)] and to provide the necessary assurances that the State of Nevada, Clark County, and Washoe County have adequate personnel and funding under State law to carry out the SIP as required under the relevant portions of section 110(a)(2)(E)(i) of the Federal Clean Air Act (CAA), as amended in 1990, and the applicable SIP regulations in 40 CFR part 51 (“Requirements for Preparation, Adoption, and Submittal of Implementation Plans”).

12.1 Statutory and Regulatory Requirements

CAA section 110(a)(2)(E)(i) requires SIPs to provide:

necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, ... under State (and, as appropriate, local) law to carry out such implementation plan

The federal regulations in title 40, part 51, subpart O of the Code of Federal Regulations (40 CFR part 51, subpart O) (“Miscellaneous Plan Content Requirements”) include requirements for SIPs pertaining to funding and personnel. Specifically, 40 CFR 51.280 (“Resources”) requires:

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

12.2 State of Nevada

Outside Clark County and Washoe County, the primary organization responsible for developing, implementing, and enforcing the SIP is the State Department of Conservation and Natural Resources (DCNR). Within DCNR, air pollution control responsibilities have been assigned to the Nevada Division of Environmental Protection (NDEP).

The Nevada Legislature has created an account, the “Account for the Management of Air Quality,” within the State General Fund that is to be administered by the NDEP. Specifically, Nevada Revised Statutes (NRS) section 445B.590 (“Account for the Management of Air Quality: Creation and administration; use; interest; payment of claims”) provides that money in

the account must be expended to carry out and enforce the statutory air pollution control program and any regulations adopted pursuant to that program. Among other functions, money from the account is to be used to defray the direct and indirect costs of preparing regulations and recommendations for legislation regarding those provisions, reviewing and acting upon applications for permits, enforcing the terms and conditions in permits, monitoring emissions and ambient air quality, preparing inventories and tracking emissions, and performing modeling, analyses and demonstrations.

The Account for the Management of Air Quality is replenished from various sources, including permit fees. NRS section 445B.300(2)(a) requires the State Environmental Commission (SEC) to provide by regulation for the issuance, renewal, modification, revocation, and suspension of operating permits, and to charge appropriate fees for their issuance in an amount sufficient to pay the expenses of administering the statutory air pollution control program and any regulations adopted to implement that program. Per NRS 445B.300(4), all administrative fees collected by the SEC pursuant to NRS section 445B.300(2) must be accounted for separately and deposited in the State General Fund for credit to the Account for the Management of Air Quality. The SEC has adopted a fee regulation that imposes one-time fees, e.g., for permit application review, and annual fees on permit holders. See Nevada Administrative Code (NAC) section 445B.327 (“Fees; late penalty”).

The Nevada Legislature has created a second account within the State General Fund, the Pollution Control Account, to provide funding for air quality management and control. See NRS section 445B.830 (“Fees to be paid to Department of Motor Vehicles; expenditure of money in Account; quarterly distributions to local governments; annual reports by local governments; grants; creation and duties of advisory committee; submission and approval of proposed grants”). Under NRS section 445B.830, the Department of Motor Vehicles charges fees in connection with administration of the State’s motor vehicle inspection and maintenance (I/M) program and deposits the fees into the Pollution Control Account. Such fees are then allotted to various State and local agencies, including the NDEP, for air pollution control purposes.

A third source of funding for the NDEP’s air programs is CAA section 103 under which USEPA is authorized to make grants to air pollution control agencies for research and development activities, and section 105 under which USEPA is authorized to make grants to air pollution control agencies to defray a portion of the costs associated with implementation of programs for the prevention and control of air pollution and achievement of the national ambient air quality standards. To qualify for section 105 grants in a given year, air pollution control agencies must at least maintain the same level of funding from non-Federal funds for air pollution control programs as for the preceding year. See CAA section 105(c).

With respect to air quality matters, the NDEP is organized into two bureaus: the Bureau of Air Quality Planning (BAQP) and the Bureau of Air Pollution Control (BAPC). BAQP is responsible for such activities as ambient air quality monitoring, emissions inventory preparation, and air quality planning and modeling studies. BAPC is responsible for such activities as air quality permitting, compliance and enforcement. The Nevada Legislature approves the funding and personnel resources for BAQP and BAPC every two years. BAQP/BAPC receives funding from permit fees, Nevada Department of Motor Vehicle fees, and federal grants, as described above.

The budget allocated to the BAQP/BAPC varies from year to year but has been in the \$6 to \$7 million range over the past four years. The most recent budget (State Fiscal Year 2011) exceeds \$6 million with 54 approved full-time equivalent staff positions in the air programs.

12.3 Clark County

State law provides that the district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution (excluding certain types of power plants), and administer the program within its jurisdiction unless superseded. See NRS 445B.500. For Clark County, the Nevada Governor has designated the Clark County Board of County Commissioners (BOCC) as the regulatory, enforcement and permitting authority for implementing applicable provisions of the Federal Clean Air Act, any amendments to that Act, and any regulations adopted pursuant to that Act within Clark County. The Nevada Governor has also designated the Board of County Commissioners of Clark County as the lead agency responsible for coordinating the preparation of implementation plans for Clark County. With respect to air pollution control, the BOCC acts through the Clark County Department of Air Quality (DAQ).

The state laws establishing local air pollution control agencies in certain counties also provide for similar powers and responsibilities to those agencies as provided to the SEC and the NDEP, including the power and duty to charge appropriate permit fees. See NRS 445B.500(1)(d). Clark County fees are set forth in Clark County Air Quality Regulations Section 18 (“Permit and Technical Service Fees”). In addition to fees charged for permits and technical services, Clark County DAQ relies on grants issued by USEPA under CAA sections 103 and 105, state grants from the Pollution Control Account per NRS section 445B.830, regional transportation commission tax revenues as established by NRS section 377A.090, and funds from the Federal Congestion Mitigation and Air Quality Program. The BOCC approves the budgets for Clark County DAQ on an annual basis. The Clark County DAQ has a budget for Fiscal Year 2011-2012 of approximately \$28.7 million and has 105 full-time equivalent staff.

12.4 Washoe County

As noted above, State law provides that the district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution (excluding certain types of power plants) and administer the program within its jurisdiction unless superseded. For Washoe County, the Nevada Governor has designated the District Board of Health of the Washoe County Health District (WCDBOH) as the regulatory, enforcement and permitting authority for implementing applicable provisions of the Federal Clean Air Act, any amendments to that Act, and any regulations adopted pursuant to that Act within Washoe County. With respect to air pollution control, the WCDBOH acts through the Washoe County Health District’s Air Quality Management Division (AQMD).

As discussed above in connection with Clark County, the WCDBOH has the authority and duty under state law to charge appropriate fees and WCDBOH does so through District Board of Health Regulations Governing Air Quality Management section 030.300 *et seq* (“Fees and Fee Schedules”). In addition to permit fees, Washoe County AQMD relies on grants issued by USEPA under CAA sections 103 and 105, Nevada Department of Motor Vehicle fees, and funds

from the City of Reno, the City of Sparks, and Washoe County via an inter-local agreement (“Interlocal Agreement Concerning the Washoe County District Health Department”) among the WCDBOH, City of Reno, City of Sparks, and Washoe County. The Washoe County Board of County Commissioners is responsible for approving the budget for the Washoe County AQMD. Washoe County AQMD has a Fiscal Year 2011-2012 budget of approximately \$2.1 million and has 19 allocated full-time staff.

12.5 Evaluation of Resource Requirements

The NDEP, Clark County DAQ, and Washoe County AQMD have been administering, implementing, and enforcing air programs designed to meet the CAA’s SIP requirements for over 40 years, and the funding and personnel described above for each of the three agencies is adequate to meet the needs of these programs. Over the next five years, current funding and personnel levels are expected to remain stable via the funding mechanisms described above and to be sufficient to meet the resource needs of the agencies for air pollution control purposes over that period.

ATTACHMENT B

The NDEP requests that the USEPA approve the following 2011 Nevada Revised Statutes (NRS) into the Nevada applicable SIP. Note that NRS 445B.500 is currently in the Nevada applicable SIP; we are requesting that USEPA replace that version with the more current 2011 codification, because that statute was revised in 2011.

Statutes for Inclusion in Nevada's ASIP

NRS 232A.020 Residency requirement for appointment; terms of members; vacancies; qualification of member appointed as representative of general public; gubernatorial appointee prohibited from serving on more than one board, commission or similar body.

1. Except as otherwise provided in this section, a person appointed to a new term or to fill a vacancy on a board, commission or similar body by the Governor must have, in accordance with the provisions of [NRS 281.050](#), actually, as opposed to constructively, resided, for the 6 months immediately preceding the date of the appointment:

(a) In this State; and

(b) If current residency in a particular county, district, ward, subdistrict or any other unit is prescribed by the provisions of law that govern the position, also in that county, district, ward, subdistrict or other unit.

2. After the Governor's initial appointments of members to boards, commissions or similar bodies, all such members shall hold office for terms of 3 years or until their successors have been appointed and have qualified.

3. A vacancy on a board, commission or similar body occurs when a member dies, resigns, becomes ineligible to hold office or is absent from the State for a period of 6 consecutive months.

4. Any vacancy must be filled by the Governor for the remainder of the unexpired term.

5. A member appointed to a board, commission or similar body as a representative of the general public must be a person who:

(a) Has an interest in and a knowledge of the subject matter which is regulated by the board, commission or similar body; and

(b) Does not have a pecuniary interest in any matter which is within the jurisdiction of the board, commission or similar body.

6. The Governor shall not appoint a person to a board, commission or similar body if the person is a member of any other board, commission or similar body.

7. The provisions of subsection 1 do not apply if:

(a) A requirement of law concerning another characteristic or status that a member must possess, including, without limitation, membership in another organization, would make it impossible to fulfill the provisions of subsection 1; or

(b) The membership of the particular board, commission or similar body includes residents of another state and the provisions of subsection 1 would conflict with a requirement that applies to all members of that body.

(Added to NRS by 1977, 1176; A [2005, 1581](#); [2011, 2992](#))

NRS 281A.150 "Public employee" defined. "Public employee" means any person who performs public duties under the direction and control of a public officer for compensation paid by the State or any county, city or other political subdivision.

(Added to NRS by 1985, 2121; A [2009, 1047](#))—(Substituted in revision for NRS 281.436)

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:

(a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and

(b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

(1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

(2) The expenditure of public money; and

(3) The administration of laws and rules of the State or any county, city or other political subdivision.

2. "Public officer" does not include:
 - (a) Any justice, judge or other officer of the court system;
 - (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to [NRS 439.290](#).
3. "Public office" does not include an office held by:
 - (a) Any justice, judge or other officer of the court system;
 - (b) Any member of a board, commission or other body whose function is advisory;
 - (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
 - (d) A county health officer appointed pursuant to [NRS 439.290](#).

(Added to NRS by 1985, 2121; A 1987, 2093; [1999, 883](#); [2001, 658](#), [1955](#), [2288](#); [2003, 116](#); [2005, 2302](#); [2009, 1047](#))—(Substituted in revision for NRS 281.4365)

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.
2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:
 - (a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of [NRS 281A.420](#).
 - (b) "Unwarranted" means without justification or adequate reason.
3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.
4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.
5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.
6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably the public officer's or employee's pecuniary interests.
7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:
 - (a) A limited use of governmental property, equipment or other facility for personal purposes if:
 - (1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;
 - (2) The use does not interfere with the performance of the public officer's or employee's public duties;
 - (3) The cost or value related to the use is nominal; and
 - (4) The use does not create the appearance of impropriety;
 - (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
 - (c) The use of telephones or other means of communication if there is not a special charge for that use.

➤ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A State Legislator shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of the State Legislator or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of the State Legislator's public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the State Legislator or legislative employee to perform that person's official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

(Added to NRS by 1977, 1105; A 1987, 2094; 1991, 1595; 1993, 2243; 1997, 3324; 1999, 2736; 2003, 3388; 2009, 1053)—(Substituted in revision for NRS 281.481)

NRS 281A.410 Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers. In addition to the requirements of the code of ethical standards:

1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:

(a) Shall not accept compensation from any private person to represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the agency makes decisions; and

(b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A State Legislator or a member of a local legislative body, or a public officer or employee whose public service requires less than half of his or her time, may represent or counsel a private person before an agency in which he or she does not serve. Any other public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

3. Not later than January 15 of each year, any State Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Department shall disclose for each such representation or counseling during the previous calendar year:

(a) The name of the client;

(b) The nature of the representation; and

(c) The name of the state agency.

4. The disclosure required by subsection 3 must be made in writing and filed with the Commission on a form prescribed by the Commission. For the purposes of this subsection, the disclosure is timely filed if, on or before the last day for filing, the disclosure is filed in one of the following ways:

(a) Delivered in person to the principal office of the Commission in Carson City.

(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.

(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the disclosure with the third-party commercial carrier.

5. The Commission shall retain a disclosure filed pursuant to subsections 3 and 4 for 6 years after the date on which the disclosure was filed.

(Added to NRS by 1977, 1106; A 1991, 1597; [2001, 2289](#); [2007, 638](#); [2009, 1054](#))—(Substituted in revision for NRS 281.491)

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

↳ without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

2. The provisions of subsection 1 do not require a public officer to disclose:

(a) Any campaign contributions that the public officer reported in a timely manner pursuant to [NRS 294A.120](#) or [294A.125](#); or

(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to [NRS 294A.286](#).

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others.

5. Except as otherwise provided in [NRS 241.0355](#), if a public officer declares to the body or committee in which the vote is to be taken that the public officer will abstain from voting because of the requirements of this section, the

necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. The provisions of this section do not, under any circumstances:

(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or

(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.

7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to [Section 6 of Article 4](#) of the Nevada Constitution.

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of the public officer's or employee's household;

(2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs the public officer or employee or a member of the public officer's or employee's household;

(4) With whom the public officer or employee has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

(Added to NRS by 1977, 1106; A 1987, 2095; 1991, 1597; 1995, 1083; [1997, 3326](#); [1999, 2738](#); [2003, 818, 1735, 3389](#); [2007, 3372](#); [2009, 1055, 1057](#))—(Substituted in revision for NRS 281.501)

NRS 439.390 District board of health: Composition; qualifications of members.

1. A district board of health must consist of two members from each county, city or town which participated in **establishing the district, to be appointed by the governing body of the county, city or town in which they reside**, together with one additional member to be chosen by the members so appointed.

2. The additional member must be a physician licensed to practice medicine in this State.

3. If the appointive members of the district board of health fail to choose the additional member within 30 days after the organization of the district health department, the additional member may be appointed by the State Health Officer.

[Part 35:199:1911; added 1939, 297; 1931 NCL § 5268.01]—(NRS A 1959, 104; 1963, 941; 1991, 1379)

NRS 445B.500 Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited.

1. Except as otherwise provided in this section and in [NRS 445B.310](#):

(a) The district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded.

(b) The program:

(1) Must include, without limitation, standards for the control of emissions, emergency procedures and variance procedures established by ordinance or local regulation which are equivalent to or stricter than those established by statute or state regulation;

(2) May, in a county whose population is 700,000 or more, include requirements for the creation, receipt and exchange for consideration of credits to reduce and control air contaminants in accordance with [NRS 445B.508](#); and

(3) Must provide for adequate administration, enforcement, financing and staff.

(c) The district board of health, county board of health or board of county commissioners is designated as the air pollution control agency of the county for the purposes of [NRS 445B.100](#) to [445B.640](#), inclusive, and the Federal

Act insofar as it pertains to local programs, and that agency is authorized to take all action necessary to secure for the county the benefits of the Federal Act.

(d) Powers and responsibilities provided for in NRS 445B.210, 445B.240 to 445B.470, inclusive, 445B.560, 445B.570, 445B.580 and 445B.640 are binding upon and inure to the benefit of local air pollution control authorities within their jurisdiction.

2. The local air pollution control board shall carry out all provisions of NRS 445B.215 with the exception that notices of public hearings must be given in any newspaper, qualified pursuant to the provisions of chapter 238 of NRS, once a week for 3 weeks. The notice must specify with particularity the reasons for the proposed regulations and provide other informative details. NRS 445B.215 does not apply to the adoption of existing regulations upon transfer of authority as provided in NRS 445B.610.

3. In a county whose population is 700,000 or more, the local air pollution control board may delegate to an independent hearing officer or hearing board its authority to determine violations and levy administrative penalties for violations of the provisions of NRS 445B.100 to 445B.450, inclusive, and 445B.500 to 445B.640, inclusive, or any regulation adopted pursuant to those sections. If such a delegation is made, 17.5 percent of any penalty collected must be deposited in the county treasury in an account to be administered by the local air pollution control board to a maximum of \$17,500 per year. The money in the account may only be used to defray the administrative expenses incurred by the local air pollution control board in enforcing the provisions of NRS 445B.100 to 445B.640, inclusive. The remainder of the penalty must be deposited in the county school district fund of the county where the violation occurred and must be accounted for separately in the fund. A school district may spend the money received pursuant to this section only in accordance with an annual spending plan that is approved by the local air pollution control board and shall submit an annual report to that board detailing the expenditures of the school district under the plan. A local air pollution control board shall approve an annual spending plan if the proposed expenditures set forth in the plan are reasonable and limited to:

(a) Programs of education on topics relating to air quality; and

(b) Projects to improve air quality, including, without limitation, the purchase and installation of equipment to retrofit school buses of the school district to use biodiesel, compressed natural gas or a similar fuel formulated to reduce emissions from the amount of emissions produced by the use of traditional fuels such as gasoline and diesel fuel,

↳ which are consistent with the state implementation plan adopted by this State pursuant to 42 U.S.C. §§ 7410 and 7502.

4. Any county whose population is less than 100,000 or any city may meet the requirements of this section for administration and enforcement through cooperative or interlocal agreement with one or more other counties, or through agreement with the State, or may establish its own program for the control of air pollution. If the county establishes such a program, it is subject to the approval of the Commission.

5. No district board of health, county board of health or board of county commissioners may adopt any regulation or establish a compliance schedule, variance order or other enforcement action relating to the control of emissions from plants which generate electricity by using steam produced by the burning of fossil fuel.

6. As used in this section, "plants which generate electricity by using steam produced by the burning of fossil fuel" means plants that burn fossil fuels in a boiler to produce steam for the production of electricity. The term does not include any plant which uses technology for a simple or combined cycle combustion turbine, regardless of whether the plant includes duct burners.

(Added to NRS by 1971, 1199; A 1973, 1819; 1975, 1126, 1782; 1977, 1559; 1979, 546; 1985, 291; 1991, 2161; 1993, 175; 1997, 1999; 1999, 1976; 2001, 1296, 1515; 2003, 44; 2007, 319; 2011, 1262)

NRS 445B.503 Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.

1. In addition to the duties set forth in NRS 445B.500, the local air pollution control board in a county whose population is 700,000 or more shall cooperate with the regional planning coalition and the regional transportation commission in the county in which it is located to:

(a) Ensure that the plans, policies and programs adopted by each of them are consistent to the greatest extent practicable.

(b) Establish and carry out a program of integrated, long-range planning that conserves the economic, financial and natural resources of the region and supports a common vision of desired future conditions.

2. Before adopting or amending a plan, policy or program, a local air pollution control board shall:

(a) Consult with the regional planning coalition and the regional transportation commission; and

- (b) Conduct hearings to solicit public comment on the consistency of the plan, policy or program with:
 - (1) The plans, policies and programs adopted or proposed to be adopted by the regional planning coalition and the regional transportation commission; and
 - (2) Plans for capital improvements that have been prepared pursuant to NRS 278.0226.
 - 3. As used in this section:
 - (a) "Local air pollution control board" means a board that establishes a program for the control of air pollution pursuant to NRS 445B.500.
 - (b) "Regional planning coalition" has the meaning ascribed to it in NRS 278.0172.
 - (c) "Regional transportation commission" means a regional transportation commission created and organized in accordance with chapter 277A of NRS.
- (Added to NRS by 1999, 1975; A 2011, 1264)

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**ATTACHMENT C: For information only;
this attachment is not intended for incorporation into Nevada's SIP.**



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Len M. Deardoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

June 25, 2012

Amy Zimfer
Associate Director
Air Division, U.S. EPA Region 9

Dear Amy,

Per our phone discussion on June 15, 2012, attached is the whitepaper discussion from the Nevada Division of Environmental Protection, Washoe County Air Quality Management Division and Clark County Department of Air Quality regarding conflict of interest provisions and infrastructure SIPs. If you have any further questions please feel free to contact me at (775) 687-9330.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Bamford".

Rob Bamford
Chief, Bureau of Air Quality Planning
Nevada Division of Environmental Protection

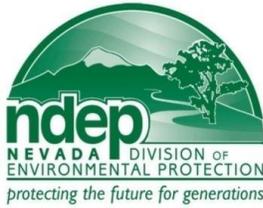
ECc: Charollette Whitey
Kevin Dick
Leslie Admirand
Lewis Wallenmeyer
Catherine Jorgenson
Jasmine Mehta
Adele Malone
Mike Elges

Counsel, EPA R9
Director, Washoe County AQMD
Deputy DA, Washoe County
Director, Clark County DAQ
Deputy DA, Clark County
Deputy AG, State of Nevada
Planning Supervisor, NDEP-BAQP
Deputy Administrator, NDEP

901 S. Stewart Street, Suite 4001 • Carson City, Nevada 89701 • p: 775.687.4670 • f: 775.687.5856 • ndep.nv.gov

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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

Analysis from the Nevada Division of Environmental Protection, Clark County,
and the Washoe County Health District Regarding Nevada’s Ethics in Government Statutes
as Applied to Section 128 of the Clean Air Act

The U.S. Environmental Protection Agency (“EPA”) has asked the State of Nevada, Clark County and Washoe County to set forth Nevada’s Ethics in Government statutes and explain how those statutes may address the conflict of interest provision in section 128 of the Clean Air Act (“CAA”). This issue has arisen in the context of EPA’s review of Nevada’s infrastructure state implementation plan (“I-SIP”) for the 1997 ozone national ambient air quality standards (“NAAQS”), and EPA has raised the issue with respect to Clark and Washoe Counties, as it reviews the Nevada I-SIP. This memorandum from the Nevada Division of Environmental Protection (“NDEP”), Clark County, and the Washoe County Health District addresses how Nevada’s Ethics in Government provisions comply with the intent of Section 128 of the CAA.

Section 128 of the CAA provides:

State boards¹

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that:

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

42 USC § 7428. EPA has provided a memorandum dated March 2, 1978 with an attached model letter and suggested definitions (the “1978 Memo”) to provide non-binding guidance in interpreting Section 128. The 1978 Memo provides that the goal of the conflict of interest requirement “is generally aimed at assuring that decisions to issue permits or enforcement orders neither be nor appear to be influenced by the private interests of individual decision makers.” It also provides “suggested” definitions for

¹ Arguably, Section 128 applies only to states, not local government entities.

“board or body”, “majority of members”, “represent the public interest”, and “significant portion of income.”

State Environmental Commission of Nevada

Nevada Revised Statute (“NRS”) 445B.200 establishes the composition of the State Environmental Commission (“SEC”). The SEC is designated as the board that hears appeals of permit approvals and enforcement orders. Five members of the SEC are designated as heads of state agencies who are employed full-time as public officers. One is from State Board of Health. The Governor must appoint five others, three of which must have certain expertise. One must be an engineering or building contractor, one must have experience in mining reclamation, and one must have experience as a conservation advocate. NRS 445B.200.

This statute complies with Section 128 of the Clean Air Act for the following reasons. First, six of the eleven members already represent the public interest. Not only are five of them persons who work forty or more hours per week to protect the public interest, but each of them are public officers as defined by Nevada Ethics in Government statutes. NRS 281A.020 sets forth the legislative findings and declarations for the Ethics and Government statutes. It provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

NRS 281A.160 goes on to define “public officer” as “a person elected or appointed to a position which:
(a) Is established by the Constitution of the State of Nevada, as statute of this State or a charter or ordinance of any county, city or other political subdivision; and (b) Involves the exercise of a public power, trust or duty.” The “exercise of a public power, trust or duty” is defined as: “(1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy; (2) The expenditure of public money; and (3) The administration of laws and rules of the State or any county, city or other political subdivision.” NRS 281A.160(1)(b). The members of the SEC are defined by state statute as public officers, and, therefore, must follow the Ethics in Government laws.

In addition, two of the five Governor’s appointees are statutorily precluded from having any pecuniary interest in matters that come within the jurisdiction of the SEC. Section 232A.020(5) provides:

- A member appointed to a board, commission or similar body as a representative of the general public must be a person who:
- (a) Has an interest in and a knowledge of the subject matter which is regulated by the board, commission or similar body; and
 - (b) Does not have a pecuniary interest in any matter which is within the jurisdiction of the board, commission or similar body.

Thus, two of the Governor’s appointees are appointed to represent the “general public interest” and are precluded from having a pecuniary interest in any matter within the jurisdiction of the SEC.

To assert that those persons do not represent the public interest because they do not fit within the “suggested” definition from the 1978 Memo seems to be an overly strict interpretation of Section 128 and what it intended to accomplish. EPA seems to suggest that a person does not represent the public interest if he or she has a “controlling interest in” or serves as an attorney, consultant, officer or director of, or has any other contractual relationship with “any person subject to permits or enforcement orders under the Clean Air Act or any trade or business association of which such a person is a member.” 1978 Memo. If one were to strictly construe that language, the fact that a board member contracted with a contractor to pave his or her driveway would render him or her unfit to represent the public interest. Moreover, that “suggested” definition conflates “public interest” with pecuniary interest because it defines “public interest” as not having a significant pecuniary interest in a person who may come before the board. That would render the two requirements set forth in Section 128 of the CAA into one requirement. It is a tenet of statutory construction that a statute not be read so as to render any part of it meaningless. The suggested definition for “represent the public interest” is simply untenable.

Certainly, it is within reason to expect that a person who serves the public interest by working over forty hours a week for the public interest (such as the directors of the various executive agencies who by statute sit on the SEC) “represent[s] the public interest” as intended by the Clean Air Act. One need only look at the mission statements for each of the agencies to understand that the persons in those positions represent the public interest.²

While the agency heads who sit by statute on the SEC are already public officers, the Governor’s appointees become public officers by virtue of their appointment in accordance with NRS 281A.160. In short, all board members are subject to the Ethics in Government statutes in NRS Chapter 281A. NRS 281A.400 precludes any member from accepting “any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer’s or employee’s position to depart from the faithful and impartial discharge of the public officer’s or employee’s public duties.” Nor may the public officer use his or her position to secure “unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any persons to whom the public officer or employee has a commitment in a private capacity to the interests of that person.” NRS 281A.400(2). That test is an objective one – the reasonable person standard – rather than a subjective one. It precludes any member of the SEC from using the position to the member’s economic benefit.

Thus, the majority of SEC members represent the public interest and cannot have a significant pecuniary interest in matters before the board. If they do, they are required to disclose that fact and recuse themselves from participation in that matter. NRS 281A.420. Furthermore, as a practical matter, the SEC sits as panel of three members to hear appeals. The members have already determined whether they must recuse themselves before sitting on the panel.

Clark County Hearing Board

² See <http://forestry.nv.gov/>; <http://www.ndow.org/about/>; <http://water.nv.gov/>; <http://agri.nv.gov/AboutUs.htm>; http://minerals.state.nv.us/aboutus_mission.htm; <http://health.nv.gov/BOH.htm>.

In Clark County, the Control Officer has been delegated the authority to issue or approve permits. For decades, Clark County and the predecessor agency in the county, the Southern Nevada Health District,³ have used the local hearing board to hear appeals of the Control Officer's permitting actions. NRS 445B.275 authorizes the governing body of the county to create a local hearing board and establishes the required makeup of the board. It states:

1. The governing body of any district, county or city authorized to operate an air pollution control program pursuant to NRS 445B.100 to 445B.640, inclusive, may appoint an air pollution control hearing board.

2. The air pollution control hearing board appointed by a county, city or health district must consist of seven members who are not employees of the State or any political subdivision of the State. One member of the hearing board must be an attorney admitted to practice law in Nevada, one member must be a professional engineer licensed in Nevada and one member must be licensed in Nevada as a general engineering contractor or a general building contractor as defined in NRS 624.215. Three must be appointed for a term of 1 year, three must be appointed for a term of 2 years and one must be appointed for a term of 3 years. Each succeeding term must be for a period of 3 years.

A Nevada county has only that authority provided by statute, which means that Clark County generally cannot add or remove provisions in its exercise of statutory authority. In particular, Clark County may exercise its authority to appoint a hearing board, and the hearing board must be composed of seven members who meet the qualifications found in NRS 445B.275(2). There is no additional language in the statute that would authorize Clark County to include additional requirements.

According to the 1978 Memo, the term "board or body" in Section 128 "includes any individual,⁴ agency, board, committee, council, department, or other state, local, or regional instrumentality authorized to approve permits or enforcement orders under the Clean Air Act, in the first instance or on appeal." Although the term "approve" is not separately defined in the memo, the suggested definition of "board or body" indicates that EPA believes an appeal is part of the approval process and, therefore, any board or body that hears appeals is subject to Section 128. From the discussions with EPA, it appears that EPA would require a SIP submittal to demonstrate compliance with Section 128 that would include additional criteria to determine the composition of the hearing board. At a minimum, it appears that EPA would require the following criteria: that a majority of members of the board or body "represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders" pursuant to the Clean Air Act. EPA may also require the incorporation of language from the suggested definitions in the 1978 Memo.

Combining this interpretation with the interpretations of "public interest" and "significant portion," shows that EPA's overall interpretation goes beyond the meaning of the plain language in Section 128 and produces a potentially absurd result. Section 128 requires that a majority of the members of the board or body represent the public interest and do not derive a significant portion of income from persons subject to permits or enforcement orders. The 1978 Memo, on the other hand, states:

³ While the Southern Nevada Health District was formerly known as the Clark County Health District, it has always been a separate legal entity from Clark County.

⁴ During the recent discussions, EPA Region 9 has indicated that EPA no longer includes the term "individual" as part of the "board or body" definition.

“Represent the public interest” means does not own a controlling interest in, have 5% or more of his or her capital invested in, serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders under the Clean Air Act or any trade or business association or which such a person is a member.

This interpretation encompasses just about anyone associated with the regulated community subject to the Clean Air Act. The 1978 Memo also states:

“Significant portion of income” means 10 percent or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. . . . “

This suggested definition potentially covers anyone employed by or formerly employed by anyone in the regulated community subject to the Clean Air Act. Essentially, the board or body could never have a majority of members who have or who have ever had an economic or business relationship with any person within the regulated community. On the other hand, the 1978 Memo indicates that Section 128 would allow a majority of members on a board or body from conservation groups. For a more stringent requirement, the 1978 Memo suggests that “[s]ome States may want to consider adopting additional provisions for selection of some number of board members from lists submitted by state conservation leagues, by a panel of representatives of environmentally concerned public interest groups, or by some similar mechanism.” Presumably, persons who are conservationists would represent the public interest within the meaning of Section 128 and would not derive any significant portion of their income from the regulated community.

As discussed above, the Control Officer approves or issues operating permits. Once that action is taken, the permit is valid and the action is complete. As the regulator, it makes sense that the Control Officer does not have any economic or business relationship with anyone in the regulated community. The regulator must be separate from the regulated. This holds true for a board or body that acts as the regulator and has the authority to approve or issue operating permits. However, even in this situation, it appears that the 1978 Memo still goes too far in its interpretation. The term “income” can have a particular meaning that does not include money received from retirement benefits or investments. By defining “income” so broadly, adherence to the “suggested” definition would, at the very least, require that certain potential appointees to the hearing board be filtered out if they were retired or owned stock in a particular company regulated by the Clean Air Act. A more reasonable interpretation of the term “income” in Section 128 is a reference to someone who currently receives compensation, through employment or by contract, from a person in the regulated community.

As stated above, while it makes sense that Section 128 would require a board or body that approves and issues permits and enforcement orders to be economically separate and apart from the regulated community, this logic breaks down once extended to a board or body that hears appeals. As indicated above, an appeal is not part of the approval process. A permit, once issued by the Control Officer, is valid and enforceable. The purpose of an appeal is not to approve and issue an operating permit. Instead, the hearing board is quasi-judicial, and its members must act in a fair and impartial manner. The

main purpose of the hearing is to provide due process to the person who applied for the permit and allow that person as well as other “aggrieved”⁵ persons with a mechanism to test the adequacy of the regulator’s decision. See NRS 445B.360. For a board hearing appeals to function properly, each member must be willing and able to be fair and impartial. If, based on a particular real or perceived conflict of interest, the member cannot act in a fair and impartial manner, then that member must not participate in that particular proceeding. However, recusal in one proceeding does not mean that member could not act fairly and impartially in another proceeding.

For a quasi-judicial board, it is illogical to attempt to manage the composition of the board for one type of potential bias without managing all other types of potential bias. In other words, the board or body that hears appeals should not be stacked with conservationists; nor should it be stacked with people associated with the regulated community. It is also nonsensical to presume that such a large group of individuals, i.e. anyone associated economically, past or present, with persons subject to permits and enforcement orders under the Clean Air Act, would be so unable to set aside their supposed bias in favor of the regulated community that they could not be trusted to make up the majority of a board or body hearing appeals. Given the purpose of an appeals board and the difference between an appeals board and a board that acts in a regulatory capacity, a more common sense interpretation of Section 128 is that it applies to a board or body that actually approve and issue permits, but not to a board or body that hears permit appeals.

This interpretation should also extend to enforcement orders. In Clark County, the Control Officer may issue orders for corrective action, and a hearing officer issues orders regarding violations. Both of these types of orders may be appealed to the hearing board. However, an appeal is not necessary to make either type of order final and valid. Because a hearing officer is not a “board or body” or the “head of an executive agency,” Section 128 doesn’t apply to the hearing officer’s actions. For all the reasons discussed above, Section 128 does not apply to the hearing board because the hearing board does not approve or issue enforcement orders, but instead, acting in a quasi-judicial capacity, renders decisions on appeals.

Section 128, by its plain language, does not apply to boards or bodies that hear appeals of permits or enforcement orders. Therefore, the Section 128 conflict of interest requirements are not applicable to the hearing board, and the SIP does not need to contain such requirements. Section 128(a)(2) does apply to the Control Officer. Therefore, the SIP must contain disclosure requirements applicable to the Control Officer. There has been discussion about submitting the applicable provisions of NRS Chapter 281A for SIP approval. As set forth above, NRS Chapter 281A already applies to the Control Officer and contains conflict of interest requirements which satisfy the requirement of Section 128.

The Washoe County Health District

The Washoe County Health District (“WCHD”) is a special district created pursuant to Chapter 439 of the Nevada Revised Statutes and by the interlocal agreement of the City of Reno, the City of Sparks, and the County of Washoe, Nevada. Washoe County District Board of Health Regulations Governing Air Quality Management (“AQR”) 010.023. The WCHD is required by law to establish a program for the control of air pollution and administer the program within its jurisdiction. NRS 445B.500. It is designated as the air pollution control agency of the district. NRS 445B.500.

⁵ Before someone can become “aggrieved,” a definitive and final action has to occur, further indication that the approval of a permit is distinct from the appeal of a permit.

The WCHD is governed by a board of health. Pursuant to NRS 439.390, the composition of the Washoe County District Board of Health is as follows:

1. A district board of health must consist of two members from each county, city or town which participated in establishing the district, to be appointed by the governing body of the county, city or town in which they reside, together with one additional member to be chosen by the members so appointed.
2. The additional member must be a physician licensed to practice medicine in this State.
3. If the appointive members of the district board of health fail to choose the additional member within 30 days after the organization of the district health department, the additional member may be appointed by the State Health Officer.

The interlocal agreement between the cities and county further clarifies that one member appointed by each jurisdiction would be an elected member of that jurisdiction. The Reno City Council, Sparks City Council, and Washoe County Board of Commissioners each appoint two members, and those six members select the seventh member. Three of the city/county members are elected officials, who represent the interest of their constituents, who are members of the public. The seventh member, the physician member, is subject to the licensing requirements of NRS Chapter 630 and to oversight by the Nevada Board of Medical Examiners. NRS 630.130. As a licensed physician, that member is also guided by the Ethics Code of the American Medical Association. American Medical Association website, available at <http://www.ama-assn.org>.

All of the members of the District Board of Health are public officers, as defined by NRS 281A.160, and therefore represent the public interest in the exercise of public power, trust or duty. Unlike other boards that are limited in jurisdiction to air quality matters, the District Board of Health has jurisdiction over all public health matters in the district except Emergency Management Services. NRS 439.410. Thus, the District Board of Health represents the public interest in all public health matters. Moreover, the mission of the Washoe County Health District is to “protect[] and enhance[] the quality of life for all citizens of Washoe County through providing health promotion, disease prevention, public health emergency preparedness, and environmental services.” Washoe Co. Health Dist. Website, available at <http://www.co.washoe.nv.us/health/dbh/mission.html>.

Furthermore, District Board of Health members are subject to the same pecuniary interest prohibitions as described above. NRS 281A.400. They are also subject to the same disclosure and recusal requirements set forth in NRS 281A.420. Therefore, by virtue of the same analysis as applied to members of the SEC, the District Board of Health satisfies the requirements of Section 128 of the Clean Air Act.

In the Washoe County Health District, the Control Officer, defined as the District Health Officer or designee issues permits and issues orders of enforcement. Anyone aggrieved by an action of the Control Officer has the option to appeal the decision. The WCHD also utilizes an intermediate hearing board. The Washoe County Air Pollution Control Hearing Board hears appeals of permit actions and enforcement orders. AQR 020.025; 020.0251. However, it is merely an advisory board to the Washoe County District Board of Health, which makes final decisions regarding such appeals. AQR 020.0051(P); 020.053-054. Since the Hearing Board does not approve permits or enforcement orders, it does not come within the purview of Section 128 of the Clean Air Act. The Board of Health is the decision making

authority but as stated above its statutorily required composition and requirement to comply with the provisions of NRS 281A satisfy the requirements of Section 128 of the Clean Air Act.

Conclusion

In summary, the Ethics in Government statutes address the concerns of Section 128 of the CAA and apply to all three hearing boards that hear air quality and compliance matters in Nevada.

ATTACHMENT D

AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA

Section 11 - Intergovernmental Consultation

11.0 Purpose

The purposes of this section of the Nevada State Implementation Plan (SIP) are to update and replace section 11 (“Intergovernmental Relations”) of the Nevada SIP as approved by the U.S. Environmental Protection Agency (USEPA) in 1972 [37 Fed. Reg. 10,842 (May 31, 1972)] and to provide for intergovernmental consultation as required under the relevant portions of section 110(a)(2)(J) and section 110(a)(2)(M) of the Federal Clean Air Act (CAA), as amended in 1990, and the applicable SIP regulations in 40 CFR part 51 (“Requirements for Preparation, Adoption, and Submittal of Implementation Plans”).

11.1 Statutory and Regulatory Requirements

CAA section 110(a)(2)(J) requires SIPs to meet the applicable requirements of section 121 (relating to consultation). CAA section 121 in turn requires that:

In carrying out the requirements of this Act requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 113(d) (relating to certain enforcement orders),⁶ the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after the date of enactment of the Clean Air Act Amendments of 1977 as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred

⁶ Sections 113(d) and 121 were added to the CAA in 1977. The CAA was significantly amended in 1990, and a process in the SIP for consultation in connection with state enforcement orders under section 113(d) is no longer required because section 113(d), as amended in 1990, no longer relates to state enforcement orders.

to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

CAA section 110(a)(2)(M) requires SIPs to:

(M) provide for consultation and participation by local political subdivisions affected by the plan.

The federal regulations at 40 CFR 51 Subpart M (“Intergovernmental Consultation”) include requirements pertaining to consultation. 40 CFR 51.240 (“General Plan Requirements”) requires states to identify relevant implementing organizations. It reads as follows:

Each State implementation plan must identify organizations, by official title, that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations. The plan shall include any related agreements or memoranda of understanding among the organizations.

40 CFR 51.241(a) (“Nonattainment areas for carbon monoxide and ozone”) requires Governors to certify the organization responsible for developing the revised plan for a carbon monoxide or ozone nonattainment area. It reads as follows:

For each AQCR or portion of an AQCR in which the national primary standard for carbon monoxide or ozone will not be attained by July 1, 1979, the Governor (or Governors for interstate areas) shall certify, after consultation with local officials, the organization responsible for developing the revised implementation plan or portions thereof for such AQCR.

11.2 Statewide Overview

Under state law, the State Department of Conservation and Natural Resources (DCNR) is designated as the Air Pollution Control Agency of the State of Nevada for the purposes of the Federal Clean Air Act insofar as it pertains to state programs. See Nevada Revised Statutes (NRS) section 445B.205.⁷ The State Environmental Commission (SEC) has been established within the DCNR to, among other purposes, adopt regulations to prevent, abate and control air pollution.

Within the DCNR, the Division of Environmental Protection (NDEP) has the responsibility to manage the air quality planning and air pollution control programs for the State of Nevada. The Director of the DCNR has selected the NDEP Administrator as the official designee for the purposes of the CAA, including, but not limited to, adoption, revision and submittal of state implementation plans. See the letter from Allen Biaggi, Director, Nevada DCNR, to Wayne Nastri, Regional Administrator, USEPA Region IX, dated May 30, 2007 and included herein as Exhibit 11-1.

State law provides that the district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control of air pollution and administer the program within its jurisdiction unless superseded.

⁷ Approved by USEPA at 72 Fed. Reg. 11 (January 3, 2007).

See NRS section 445B.500.⁸ Two counties, Clark and Washoe, meet the population threshold and have developed their own air programs. Outside these two counties, the NDEP is responsible for developing, implementing, and enforcing the SIP. In addition, state law provides one exception to the general assignment of air program responsibilities to counties whose populations are 100,000 or more. The exception is for plants that burn fossil fuels in a boiler to produce steam for the production of electricity. Boilers at such power plants, regardless of their location within the state, are subject to exclusive NDEP jurisdiction. See NRS section 445B.500, subsections (5) and (6). Lastly, the DCNR, through the SEC and the NDEP, retains the authority to administer air programs in Clark and Washoe Counties if such county-administered programs are found by the SEC to be inadequate. See NRS section 445B.520.⁹

In carrying out the State's air programs, the NDEP is authorized to cooperate with appropriate federal officers and agencies of the Federal Government, other states, interstate agencies, local governmental agencies and other interested parties in all matters relating to air pollution control in preventing or controlling the pollution of the air in any area. See NRS section 445B.235.¹⁰ As authorized under state law, the NDEP has taken the initiative to coordinate with local governments concerning air quality planning matters outside of Clark and Washoe Counties. See the Pahrump Valley Clean Air Action Plan Memorandum of Understanding, at <http://ndep.nv.gov/baqp/monitoring/pahrumpmonitor2.html> (click on "MOU" in the section called "Preferred Option"), as an example of NDEP coordination with local governmental agencies in addressing air pollution issues that arise.

Permits for New or Modified Stationary Sources

Under a delegation agreement with USEPA Region IX, the NDEP has agreed to implement and enforce the federal regulations for the Prevention of Significant Deterioration (PSD) found in title 40, part 52, section 21 of the Code of Federal Regulations (40 CFR 52.21). The most recent delegation agreement took effect on September 15, 2011. Under the delegation agreement, the NDEP provides for early notice to, and consultation with, federal land managers of proposed new major sources or major modifications that could impact "Class I" areas, i.e., areas for which the ambient air quality standards have traditionally been met and for which the least amount of deterioration is allowed under CAA requirements for PSD. See 40 CFR 52.21(p). For other PSD sources, the NDEP provides notice and opportunity to comment on draft permits for new major sources and major modifications to affected county air pollution control districts and city and county agencies where the proposed source would be located and to any comprehensive regional land use planning agency and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification. See 40 CFR 52.21(q) and 40 CFR 124.10.

With respect to proposed stationary sources and modifications that are not subject to PSD requirements, the NDEP provides notice and opportunity to comment to the county air pollution control districts if the proposed source or modification would be located within the respective counties. See NAC 445B.3395 and NAC 445B.3457.

⁸ Approved by USEPA at 71 Fed. Reg. 51,766 (August 31, 2006).

⁹ Approved by USEPA at 71 Fed. Reg. 51,766 (August 31, 2006).

¹⁰ Approved by USEPA at 71 Fed. Reg. 51,766 (August 31, 2006).

11.3 Clark County

As noted above, State law provides that the district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control air pollution and administer the program within its jurisdiction unless superseded. For Clark County, the Nevada Governor has designated the Clark County Board of County Commissioners (BOCC) as the regulatory, enforcement and permitting authority for implementing applicable provisions of the CAA, any amendments to that Act, and any regulations adopted pursuant to that Act within Clark County. The Nevada Governor has also designated the Clark County BOCC as the lead agency responsible for coordinating the preparation of implementation plans for Clark County. See Letter from Governor Kenny C. Guinn, dated June 21, 2001, which is included herein as Exhibit 11-2. With respect to air pollution control, the BOCC acts through the Clark County Department of Air Quality (DAQ).

Under State law, certain specific consultation requirements apply to county agencies in Nevada that establish and implement their own air pollution control programs where the population in the county is 700,000 or more. See NRS section 445B.503, which is included herein as Exhibit 11-3. Clark County meets this population threshold, and thus, under NRS 445B.503, the BOCC must cooperate with the regional planning coalition and the regional transportation commission in Clark County to ensure that the plans, policies, and programs adopted by each of them are consistent to the greatest extent possible. Specifically, before adopting or amending an air quality plan, policy or program, the BOCC must consult with the regional planning coalition and the regional transportation commission. See NRS section 445B.503(2). Within Clark County, the regional planning coalition is the Southern Nevada Regional Planning Coalition and the regional transportation commission is the Regional Transportation Commission (RTC) of Southern Nevada. Members on the Southern Nevada Regional Planning Coalition include representatives from Clark County, the cities of Boulder City, Henderson, Las Vegas, and North Las Vegas, and Clark County School District. Membership on the Southern Nevada RTC is set by State statute and consists of two members from the BOCC, two members from the city council of the largest incorporated city (Las Vegas) and one member from the city council of every other incorporated city in the county (Boulder City, Henderson, Mesquite, and North Las Vegas).

Permits for New or Modified Stationary Sources

Clark County regulations provide for notice to, and consultation with, federal land managers of proposed new major sources or major modifications that could impact “Class I” areas. See Clark County Air Quality Regulations (AQR) section 12.2.15. For proposed permit actions involving minor sources, Clark County DAQ provides notice and opportunity for comment to officials and agencies having jurisdiction over the location where the proposed source or modification would be located. See Clark County AQR section 12.1 (effective July 1, 2010), subsection 5.3. For major sources, Clark County DAQ specifically provides notice to the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; any state, federal land manager, and Indian governing body whose lands may be affected by emissions from the source or modification. See Clark County AQR section 12.2 (amended November 16, 2010), subsection 12.2.16.2; and section 12.3 (effective July 1, 2010), subsection 12.3.8.

Transportation Planning and Conformity to the SIP

Federal law requires that regional planning officials prepare both a transportation plan to benefit public mobility and an air quality plan to benefit public health. Under the CAA, transportation activities that receive federal funding or approval must be fully consistent with the plan developed to meet federal clean air standards, i.e., the SIP. Specifically, the CAA prohibits federal agencies and metropolitan planning organizations (MPOs) from approving any transportation plan, program, or project that fails to conform to the SIP. See CAA section 176(c). The “transportation conformity” requirements apply within all “nonattainment” and “maintenance” areas (i.e., former nonattainment areas that have been redesignated to “attainment”) for a national ambient air quality standard, for the pollutant for which the area is either “nonattainment” or “maintenance.”

The transportation conformity requirements apply in Clark County based on the status of portions of the county as a “maintenance” area for the national ambient air quality standard for carbon monoxide, a “nonattainment” area for the national ambient air quality standard for particulate matter less than 10 microns in diameter (PM-10), and a “nonattainment” area for the 1997 national ambient air quality standard for ozone.¹¹

The MPO in Clark County is the Southern Nevada RTC. The Southern Nevada RTC has established an interagency process to ensure that transportation and air quality issues are addressed by the various organizations involved in transportation and air quality planning and to meet the specific requirements for interagency consultation set forth in 40 CFR 93.105. Consultation is required when the Southern Nevada RTC develops or revises a regional transportation plan or program or makes a conformity determination and when the Clark County DAQ develops or revises the SIP.

Within Clark County, interagency consultation is implemented through the Conformity Working Group, which comprises stakeholder federal, state, and regional agencies. Specifically, the Conformity Working Group in Clark County consists of representatives from the USEPA Region IX, Federal Highway Administration, Federal Transit Administration, NDEP, Nevada Department of Transportation, the Southern Nevada RTC, the Clark County Public Works Department, Clark County DAQ, Clark County Department of Aviation, and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City. USEPA has approved Clark County DAQ’s *Clark County Transportation Conformity Plan* (January 2008), which provides specific criteria and procedures for interagency consultation for conformity purposes, as part of the Nevada SIP. See 73 Fed. Reg. 66,182 (November 7, 2008).

11.4 Lake Tahoe Basin

Lake Tahoe lies in a basin between crests of the Sierra Nevada and Carson ranges on the California-Nevada border at a surface elevation of approximately 6,260 feet above sea level. The Lake Tahoe Basin comprises portions of El Dorado and Placer Counties on the California side, and State hydrographic area 90 on the Nevada side. Hydrographic area 90 includes the

¹¹ See 75 Fed. Reg. 59,090 (September 27, 2010)(USEPA approval of redesignation request for Las Vegas Valley from nonattainment to attainment for the carbon monoxide standard); CAA designations for Nevada with respect to the national ambient air quality standards are contained in 40 CFR § 81.329 (see 77 FR 30088 for 2008 ozone national ambient air quality standards area designations).

southwestern corner of Washoe County and the western-most portions of Carson City and Douglas County. The NDEP administers and enforces state air pollution regulations within the Carson City and Douglas County portions of the Lake Tahoe Basin, and Washoe County Health District administers and enforces District Board of Health air pollution regulations within the Washoe County portion of the basin.

In 1969, to protect and restore the Lake Tahoe environment in the wake of development pressures, Congress ratified a compact between the States of California and Nevada and created the Tahoe Regional Planning Agency (TRPA). The compact, as revised in 1980 (http://www.trpa.org/documents/about_trpa/Bistate_Compact.pdf), gave TRPA authority to adopt environmental quality standards, called thresholds, and to enforce ordinances designed to achieve the thresholds. Seven of TRPA's Governing Board are from California; seven are from Nevada; and there is one non-voting Presidential appointee. The Nevada delegation on TRPA's Governing Board includes appointees by the boards of county commissioners of Douglas and Washoe Counties, by the board of supervisors of Carson City, and by the Governor, and includes the secretary of State of Nevada (or designee), and the director of the DCNR (or designee), and one appointee by the six other members of the Nevada delegation. In 1978, the Governor of Nevada designated TRPA as the agency to prepare the 1979 nonattainment plan for oxidants and carbon monoxide for the Lake Tahoe Basin. The NDEP and California Air Resources Board worked with TRPA to develop the 1979 nonattainment area plan for the Basin; however, thereafter the NDEP has taken the lead for air planning matters on the Nevada side of the Basin.

Transportation Planning and Conformity to the SIP

As noted above in connection with Clark County, federal law requires that regional planning officials prepare both a transportation plan to benefit public mobility and an air quality plan to benefit public health and that certain "transportation conformity" requirements, including those related to interagency consultation, apply within nonattainment and maintenance areas.

The transportation conformity requirements apply within Lake Tahoe Basin based on the status of the Basin as a "maintenance" area for the national ambient air quality standard for carbon monoxide. See 68 Fed. Reg. 69,611 (final rule redesignating the Nevada side of the Lake Tahoe Basin from nonattainment to attainment for the carbon monoxide standard). Although the Nevada side of the Basin qualifies as a "limited" maintenance area, transportation conformity determinations are still required for transportation plans, programs and projects.

The MPO in the Lake Tahoe Basin is the Tahoe Metropolitan Planning Organization ("TMPO"). The jurisdiction of the TMPO covers all areas within the watershed that drains into Lake Tahoe. The TMPO board is made up of 16 members. Fifteen of these members are the same members that make up the board of the TRPA and there is one representative of the U.S. Forest Service, in recognition of the major role this agency plays in transportation provision in the Basin. Six members, who are locally elected officials or their designees, represent the units of local government.

In developing the Regional Transportation Plan (RTP) and the Transportation Improvement Plan, the TMPO works very closely with other agencies responsible for planning activities within the Tahoe Area. Since the TMPO shares its board and staff with the TRPA, there is a close linkage between local planning, environmental protection, and the transportation planning that goes into

the RTP. The TMPO has established an interagency process to ensure that transportation and air quality issues are addressed by the various organizations involved in transportation and air quality planning and to meet the specific requirements for interagency consultation set forth in 40 CFR 93.105.

Within the Lake Tahoe Basin, interagency consultation is implemented through the Conformity Task Force, which comprises stakeholder federal, state, and regional agencies. Specifically, the Conformity Task Force in the Lake Tahoe Basin consists of representatives from the USEPA Region IX, Federal Highway Administration, Federal Transit Administration, NDEP, California Air Resources Board, Eldorado Air Pollution Control District, Placer County Air Pollution Control District, Washoe County Health District, Nevada Department of Transportation, California Department of Transportation, Eldorado County Department of Transportation, Placer County Public Works Department, Douglas County Community Development, Washoe County RTC, TRPA and TMPO.

11.5 Washoe County

As noted above, State law provides that the district board of health, county board of health or board of county commissioners in each county whose population is 100,000 or more shall establish a program for the control air pollution and administer the program within its jurisdiction unless superseded. For Washoe County, the Nevada Governor has designated the District Board of Health of the Washoe County Health District (WCDBOH) as the regulatory, enforcement and permitting authority for implementing applicable provisions of the CAA, any amendments to that Act, and any regulations adopted pursuant to that Act within Washoe County. With respect to air pollution control, the WCDBOH acts through the Washoe County Health District's Air Quality Management Division (AQMD).

Under state law, a district board of health must consist of two members from each county, city or town that participated in establishing the district, to be appointed by the governing body of the county, city or town in which they reside, together with one additional member to be chosen by the six members so appointed. See NRS 439.390, included herein as Exhibit 11-4. The additional member must be a physician licensed to practice medicine in the State of Nevada. Accordingly, the WCDBOH comprises seven members, two each that (one elected official and one non-elected official) represent the city of Reno, the city of Sparks, and Washoe County, and one who is a licensed physician.

Permits for New or Modified Stationary Sources

Under a delegation agreement with USEPA Region IX, the AQMD has agreed to implement and enforce the federal PSD regulations found in 40 CFR 52.21. The most recent delegation agreement took effect on March 13, 2008. Under the delegation agreement, AQMD provides for early notice to, and consultation with, federal land managers of proposed new major sources or major modifications that could impact "Class I" areas. See 40 CFR 52.21(p). For other PSD sources, the AQMD provides notice and opportunity to comment on draft permits for new major sources and major modifications to affected county air pollution control districts and city and county agencies where the proposed source would be located and to any comprehensive regional land use planning agency and any state, federal land manager, or Indian governing body whose

lands may be affected by emissions from the proposed source or modification. See 40 CFR 52.21(q) and 40 CFR 124.10.

For new major sources and major modifications that are “major” for a nonattainment pollutant within a nonattainment area, AQMD specifically provides for early consultation with any federal land manager whose lands may be affected by a proposed source or modification and provides for notice to the NDEP, the regional planning authority of Washoe County, local government offices, and any Indian governing body whose lands may be affected by the proposed permitting action. See WCDBOH Regulations Governing Air Quality Management section 030.506 (revised October 25, 1995), paragraphs (D) and (F).

Transportation Planning and Conformity to the SIP

As noted above in connection with Clark County, federal law requires that regional planning officials prepare both a transportation plan to benefit public mobility and an air quality plan to benefit public health and that certain “transportation conformity” requirements, including those related to interagency consultation, apply within nonattainment and maintenance areas. The “transportation conformity” requirements apply within all “nonattainment” and “maintenance” areas (i.e., former nonattainment areas that have been redesignated to “attainment”) for the national ambient air quality standard.

The transportation conformity requirements apply in Washoe County based on the status of the Truckee Meadows portion of the county (i.e., State hydrographic area 87) as a “maintenance” area for the national ambient air quality standard for carbon monoxide and as a “nonattainment” area for the national ambient air quality standard for particulate matter (PM-10).¹²

The MPO in Washoe County is the Regional Transportation Commission of Washoe County (“Washoe County RTC”). The Washoe County RTC has established an interagency process to ensure that transportation and air quality issues are addressed by the various organizations involved in transportation and air quality planning and to meet the specific requirements for interagency consultation set forth in 40 CFR 93.105. In Washoe County, interagency consultation is implemented through the Conformity Working Group, which comprises stakeholder federal, state, and regional agencies. Specifically, the Conformity Working Group consists of representatives from the USEPA Region IX, Federal Highway Administration, Federal Transit Administration, NDEP, Nevada Department of Transportation, Washoe County RTC, Washoe County District Health Department – Air Quality Management Division, and the Truckee Meadows Regional Planning Agency.¹³

¹² See 73 Fed. Reg. 38,124 (July 3, 2008)(USEPA approval of redesignation request for Truckee Meadows from nonattainment to attainment for the carbon monoxide standard); CAA designations for Nevada with respect to the national ambient air quality standards are contained in 40 CFR § 81.329.

¹³ See Washoe County RTC’s and AQMD’s “Working Draft,” *Washoe County Transportation Conformity Plan*, September 2011.

**EXHIBITS TO SECTION 11, INTERGOVERNMENTAL
CONSULTATION, OF THE NEVADA STATE
IMPLEMENTATION PLAN**

June 2012

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EXHIBIT 11-1

ALLEN BIAGGI
Director

JIM GIBBONS
Governor

KAY SCHERER
Deputy Director

State of Nevada
Department of Conservation and Natural Resources
Office of the Director
Richard H. Bryer Building
901 S. Stewart Street, Suite 5001
Carson City, Nevada 89701
Telephone (775) 684-2700
Facsimile (775) 684-2715
www.dcrnr.nv.gov



Division of Conservation Districts
Division of Environmental Protection
Division of Forestry
Division of State Lands
Division of State Parks
Division of Water Resources
National Heritage Program
Wild Otter Program

STATE OF NEVADA
Department of Conservation and Natural Resources
OFFICE OF THE DIRECTOR

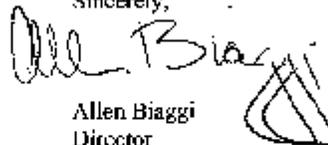
May 30, 2007

Wayne Nastri
Regional Administrator
ORA-1, USEPA Region 9
75 Hawthorne Street
San Francisco CA 94105

Dear Mr. Nastri:

Nevada Revised Statutes 445B.205 designates the Department of Conservation and Natural Resources (Department) as the air pollution control agency for the State of Nevada for the purposes of the Clean Air Act insofar as it pertains to State programs. Within the Department, the Division of Environmental Protection has responsibility to manage the air quality planning and air pollution control programs for the State of Nevada. Therefore, pursuant to Nevada Administrative Code 445B.053, I am hereby assigning the Administrator of the Nevada Division of Environmental Protection, or the Deputy Administrator acting on his behalf, to be my official designee for the purposes of the Clean Air Act, including, but not limited to, adoption, revision and submittal of state plans and state implementation plans.

Sincerely,


Allen Biaggi
Director

cc Michael Dayton, Chief of Staff, Office of the Governor
Jodi Stephens, Deputy Chief of Staff, Office of the Governor
Leo Drozcoff, Administrator, NDEP
Colleen Cripps, Deputy Administrator, NDEP
Tom Porta, Deputy Administrator, NDEP
Deborah Jordan, Director, EPA Air Division, Region IX
Jefferson Wehling, ORC, EPA Region IX

Jun 21 01 04:08p



OFFICE OF THE GOVERNOR

KENNY C. GUINN
Governor

June 21, 2001

VIA FACSIMILE
702/863-6041

Mr. Darlo Herrera, Chairman
Clark County Commission
P. O. Box 351691
Las Vegas, NV 89133-1601

Dear Chairman Herrera:

I would like to reaffirm designation of the Board of County Commissioners of Clark County as the lead agency responsible for coordinating the preparation of implementation plans for Clark County. In addition, I would like to designate the Board of County Commissioners as the regulatory, enforcement and permitting authority for implementing applicable provisions of the Federal Clean Air Act, any amendments to that Act, and any regulations adopted pursuant to that Act within Clark County.

Our staff will work with the County as you consolidate these functions and work toward full compliance with the EPA. The consequences for Clark County, and indeed the State, dictate that we work cooperatively and quickly toward implementation and attainment.

KENNY C. GUINN
Governor

MB/tm

cc: Mike Turnlund, Director, DCNR
Aim Biaggi, Administrator, DEP
Johnnie Johnson, Deputy Administrator, DEP
Colleen Coops, Chief, EAQ

TITLE 40 - PUBLIC HEALTH AND SAFETY

CHAPTER 445B - AIR POLLUTION

PROGRAM FOR CONTROL OF AIR POLLUTION

NRS 445B.503 Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.

1. In addition to the duties set forth in [NRS 445B.500](#), the local air pollution control board in a county whose population is 700,000 or more shall cooperate with the regional planning coalition and the regional transportation commission in the county in which it is located to:

(a) Ensure that the plans, policies and programs adopted by each of them are consistent to the greatest extent practicable.

(b) Establish and carry out a program of integrated, long-range planning that conserves the economic, financial and natural resources of the region and supports a common vision of desired future conditions.

2. Before adopting or amending a plan, policy or program, a local air pollution control board shall:

(a) Consult with the regional planning coalition and the regional transportation commission; and

(b) Conduct hearings to solicit public comment on the consistency of the plan, policy or program with:

(1) The plans, policies and programs adopted or proposed to be adopted by the regional planning coalition and the regional transportation commission; and

(2) Plans for capital improvements that have been prepared pursuant to [NRS 278.0226](#).

3. As used in this section:

(a) "Local air pollution control board" means a board that establishes a program for the control of air pollution pursuant to [NRS 445B.500](#).

(b) "Regional planning coalition" has the meaning ascribed to it in [NRS 278.0172](#).

(c) "Regional transportation commission" means a regional transportation commission created and organized in accordance with [chapter 277A](#) of NRS.

(Added to NRS by [1999 1975](#); A [2011 1264](#))

TITLE 40 - PUBLIC HEALTH AND SAFETY

CHAPTER 439 - ADMINISTRATION OF PUBLIC HEALTH

LOCAL ADMINISTRATION

District Board of Health and District Health Officer in Counties Whose Population is Less Than 700,000

NRS 439.390 District board of health: Composition; qualifications of members.

1. A district board of health must consist of two members from each county, city or town which participated in establishing the district, to be appointed by the governing body of the county, city or town in which they reside, together with one additional member to be chosen by the members so appointed.
2. The additional member must be a physician licensed to practice medicine in this State.
3. If the appointive members of the district board of health fail to choose the additional member within 30 days after the organization of the district health department, the additional member may be appointed by the State Health Officer.

[Part 35:199:1911; added 1939, 297; 1931 NCL § 5268.01]—(NRS A 1959, 104; 1963, 941; 1991, 1379)