State of Nevada
Dept. of Conservation & Natural Resources
State Environmental Commission SEC.nv.gov
901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

SEC Appeal Hearing
Notice Pursuant to NRS 233B.121 and NAC 445B.891

Date: January 20, 2015

To: Appellant:
Coyote Springs Investment, LLC
Represented by Scott Hernandez, Esq.
Robison, Belaustegui, Sharp & Low

Respondent:
Nevada Division of Environmental Protection
Represented by Cassandra Joseph, Esq. & Belinda Suwe, Esq.
Office of the Attorney General

Intervener:
BedRoc Limited, LLC
Represented by Leslie Godfrey, Esq.
Greenberg Traurig, LLP

From: Valerie King, CPM, Executive Secretary

Subject: Notice of Appeal Hearing: NDEP Permit No. SW1722REV00

A three-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing regarding the above referenced permit. The hearing will be held on February 17, 20153 at 10:00 a.m. in Carson City, Nevada at the Bryan Building, 901 S. Stewart St. 2nd floor Tahoe Conference Room. The hearing date was selected after consultation with the parties. The SEC has jurisdiction to hear this appeal pursuant to NRS 444.560 and NAC 444.980. The regulations involved in this appeal hearing are: NAC 444.678(5), NAC 444.678(6), NAC 444.678(9) and NAC 444.696(2).

About the Appeal: On September 29, 2014, Coyote Springs Investment LLC (Coyote Springs) filed an appeal signed by Emilia K. Cargill, Senior Vice President & General Counsel. In summary, Coyote Springs alleges that the NDEP Solid Waste Disposal Site permit issued to BedRoc violates multiple regulatory provisions.

Coyote Springs alleges that the BedRoc permit has not met the prescribed "Location Restrictions" as set forth in NAC 444.678 due to:

- Issues associated with a Lincoln County Special Use Permit issued to BedRoc in 2003.
- The site's location in the Pahranagat Wash floodplain.
- The beautification plans submitted by BedRoc being inadequate

Coyote Springs also alleges BedRoc does not have an adequate water supply for dust control, pursuant to NAC 444.696(2).

The issues for this appeal will be further clarified in the pre-hearing briefs ordered by the SEC on January 8, 2015.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at:
http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875
NRS 233B.121 to 233B.150 are also applicable. See:
http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec121

Related Information: Additional information about this appeal is available on the SEC website at the following location:
http://sec.nv.gov/main/bedroc.htm

ecc: NDEP Staff
SEC Appeals Panel
SEC/DAG

PRACTICE BEFORE THE STATE ENVIRONMENTAL COMMISSION

NAC 445B.875 Definitions. (NRS 233B.050)

1. As used in NAC 445B.875 to 445B.899, inclusive, unless the context otherwise requires, the words and terms defined in NAC 445B.877 to 445B.884, inclusive, have the meanings ascribed to them in those sections.

2. The meanings ascribed to words not included in NAC 445B.877 to 445B.884, inclusive, are in accordance with applicable sections of NAC governing air quality, water pollution or solid waste management and of chapters 444, 445A, 445B and 459 of NRS.

[Environmental Comm'n, Practice Rule 1 § B, eff. 1-7-73; A and renumbered as § 1.2, 1-9-76]—(NAC A 11-9-95; R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.877 "Appellant" defined. (NRS 233B.050) "Appellant" means any person:

1. Who requests a hearing before the Commission, pursuant to chapter 278, 444, 444A, 445A, 445B, 459, 486A or 519A of NRS or the Commission's regulations concerning the control of air or water pollution or the management of solid waste; or

2. Whose appearance before the Commission is required by:

(a) The Director;

(b) An authorized representative of the Director; or

(c) A person who is designated by or pursuant to a county or city ordinance or a regional agreement or regulation to enforce local ordinances or regulations for the control of air pollution.

[Environmental Comm'n, Practice Rule 1 § A par. (1), eff. 1-7-73; A 4-3-74; A and renumbered as § 1.1.1, 1-9-76]—(NAC A 10-29-93)—(Substituted in revision for NAC 445.981)

NAC 445B.879 "Commission" defined. (NRS 233B.050) "Commission" means the State Environmental Commission or a panel of three or more members of the State Environmental Commission in accordance with NRS 445A.610 and 445B.350, where appropriate.

[Environmental Comm'n, Practice Rule 1 § A par. (2), eff. 4-3-74; A and renumbered as § 1.1.2, 1-9-76]—(Substituted in revision for NAC 445.982)

NAC 445B.881 "Department" defined. "Department" means the State Department of Conservation and Natural Resources.

(Supplied in codification)—(Substituted in revision for NAC 445.983)

NAC 445B.882 "Director" defined. (NRS 233B.050) "Director" means the Director of the Department.

[Environmental Comm'n, Practice Rule 1 § A par. (3), eff. 4-3-74; renumbered as § 1.1.3, 1-9-76]—(Substituted in revision for NAC 445.984)

NAC 445B.884 "Person" defined. (NRS 233B.050) "Person" has the meaning ascribed to it in NRS 445B.150.

[Environmental Comm'n, Practice Rule 1 § A par. (4), eff. 1-7-73; A 4-3-74; renumbered as § 1.1.4, 1-9-76]—(Substituted in revision for NAC 445.985)

NAC 445B.886 Petitions to adopt, file, amend or repeal regulations. (NRS 233B.050)

1. Any interested person may petition the Commission in writing for the adoption, filing, amendment or repeal of any regulation and shall accompany his or her petition with relevant data, views and arguments as required by form 1.*

2. Upon submission of a petition, the Commission will within 30 days either deny the petition in writing stating its reasons or initiate regulation-making proceedings in accordance with NRS 444.560, 445A.435 or 445B.215, whichever is applicable.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 3, eff. 1-9-76]—(Substituted in revision for NAC 445.986)

NAC 445B.888 Declaratory orders, advisory opinions. (NRS 233B.050)

1. Any member of the public may petition the Commission for a declaratory order or an advisory opinion as to the applicability of any statutory provision, Commission regulation or decision as required by form 2.*

2. Upon submission of a petition, the Commission will within 30 days issue a declaratory order or an advisory opinion in writing stating reasons for its action.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 6, eff. 1-9-76]—(Substituted in revision for NAC 445.987)

NAC 445B.890 Appeal of final decision of Department: Request for hearing; basis for appeal. (NRS 233B.050)

1. Any person aggrieved by a final decision of the Department may, not later than 10 days after notice of the action of the Department, appeal the decision by filing a request for a hearing before the Commission on a form 3* with the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

2. An appeal of a final decision of the Department must be based upon one or more of the following grounds:

(a) The final decision was in violation of any constitutional or statutory provision;

(b) The final decision was in excess of the statutory authority of the Department;

(c) The final decision was made upon unlawful procedure;

(d) The final decision was affected by other error of law;

(e) The final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) The final decision was arbitrary or capricious or characterized by abuse of discretion.

3. A form 3* which is submitted to the Commission pursuant to subsection 1 must include, without limitation:

(a) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(b) A reference to each paragraph of subsection 2 which provides a basis for the appeal and a reference to each provision of law allegedly violated; and

(c) A brief and concise statement of the facts which provide the basis for the appeal.

4. The Commission may dismiss any request for a hearing to appeal a final decision of the Department if the person requesting the hearing fails to submit a completed form 3* with his or her request.

*(See adopting agency for form.)

[Environmental Comm'n, Practice Rule 2, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 8, 1-9-76]—(NAC A 10-29-93; R063-98, 8-4-98; R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.891 Notice of hearing. (NRS 233B.050)

1. The Secretary of the Commission will schedule a hearing to be held within 20 days after receipt of the request for a hearing or an order to appear before the Commission unless each party to the hearing waives the right to a hearing within the 20-day period in writing or on the record before the Commission.

2. All of the parties must be notified by registered or certified mail of the date of the hearing which must be no less than 5 days after the date of notification. The notice must include:

(a) A statement of the time, place and nature of the hearing;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to each paragraph of subsection 2 of NAC 445B.890 which provides a basis for the appeal and a reference to each provision of law allegedly violated; and

(d) A brief and concise statement of the facts which provide the basis for the appeal.

[Environmental Comm'n, Practice Rule 4, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 9, 1-9-76]—(NAC A by R135-11, 5-30-2012)—(Substituted in revision for NAC 445.989)

NAC 445B.8913 Prehearing conference. (NRS 233B.050)

1. The Commission may, upon its own motion or a motion made by a party, conduct a prehearing conference to:

(a) Formulate, simplify or limit the issues involved in a hearing;

(b) Obtain admissions of fact or any stipulation of the parties which will avoid unnecessary proof;

(c) Arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) Identify the witnesses and the subject matter of their expected testimony and, if necessary, limit the number of witnesses or the scope of their testimony;

(e) Rule on any pending prehearing motions or matters;

(f) Establish a schedule for the filing of motions or the submission of briefs; or

(g) Consider any other action or procedure which may expedite the orderly conduct and disposition of the proceedings or a settlement of the matter.

2. Notice of a prehearing conference conducted pursuant to this section must be provided to each party. Unless otherwise ordered and for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to any agreement reached or ruling made at the conference.

3. Any action taken or agreement reached at a prehearing conference:

(a) Must be made a part of the record;

(b) Controls the course of subsequent proceedings, unless otherwise stipulated by each party with the consent of the Commission; and

(c) Except as otherwise provided pursuant to a stipulation entered pursuant to paragraph (b), is binding upon all parties, including, without limitation, any person that subsequently becomes a party to the proceedings.

(Added to NAC by Environmental Comm'n by R135-11, eff. 5-30-2012)

NAC 445B.8914 Identification of witnesses; identification, exchange and admissibility of exhibits; admissibility and relevancy of evidence. (NRS 233B.050)

1. Except as otherwise provided by an order of the Commission, each party to a hearing before the Commission shall, not later than 5 days before the hearing, provide to every other party:

(a) Notice of the identity of each person who intends to offer direct oral testimony at the hearing; and

(b) A copy of each exhibit which the party intends to offer as evidence in support of the party's position.

2. The Commission will not require any party to provide notice of the identity of any person who intends to offer rebuttal testimony at a hearing before the Commission.

3. If a party fails to provide:

(a) Notice of the identity of a witness pursuant to paragraph (a) of subsection 1 and such failure results in prejudice to an opposing party, the Commission may:

(1) Refuse to allow the witness to testify; or

(2) Disregard any portion of the testimony of the witness.

(b) A copy of an exhibit pursuant to paragraph (b) of subsection 1 and such failure results in prejudice to an opposing party, the Commission may:

(1) Refuse to admit the exhibit into evidence; or

(2) Disregard the exhibit.

4. The Commission will not admit into evidence at a hearing any exhibit offered as evidence until each party at the hearing is provided the opportunity to examine the exhibit.

5. The Commission will not, at a hearing to affirm, modify or reverse an action of the Director pursuant to NRS 444.570, 445A.605 or 445B.360, consider evidence which was not submitted to the Department before the issuance of the decision or order which is the subject of the appeal unless:

(a) The Department allowed a period for public comment before the Director took the action; and

(b) The Commission determines that reasonable cause exists for the failure of a party to submit the evidence.

6. The Commission may, if the basis of an appeal is an alleged irregularity in procedure by the Department which is not reflected in the record, consider evidence concerning the alleged irregularity in procedure.

7. The Commission will not consider any evidence, including, without limitation, the testimony of a witness, which:

(a) Does not have the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence; and

(b) Is not directly related to the subject matter of the proceeding.
(Added to NAC by Environmental Comm'n by R135-11, eff. 5-30-2012)

NAC 445B.8915 Intervention in certain proceedings. (NRS 233B.050, 445B.210)

1. A person, other than a party to a proceeding, who believes that he or she may be directly and substantially affected by the proceeding may request an order to intervene in the proceeding by filing a written petition for leave to intervene with the Commission.

2. Except as otherwise provided in this subsection, a petition for leave to intervene must be filed with the Commission not later than 10 calendar days after the notice of appeal related to the proceeding in which the intervention is sought is filed with the Commission pursuant to the provisions of NRS 445B.340. The petitioner shall serve a notice of a petition for leave to intervene upon each party to the proceeding. A party may file a response to the petition within 5 calendar days after receipt of the petition. If a petitioner files a petition for leave to intervene with the Commission after the period prescribed in this subsection, the petition must set forth the reason for the delay in filing the petition. The petition for leave to intervene must:

(a) Identify the proceeding in which the petitioner requests leave to intervene;

(b) Set forth the name and address of the petitioner and, if the petitioner is represented by an attorney or other authorized person, the name, address and telephone number of the attorney or other authorized person;

(c) Contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding;

(d) Set forth the manner in which the petitioner will be affected by the proceeding; and

(e) Include a statement indicating whether or not the petitioner intends to present evidence in the proceeding.

3. If a petition for leave to intervene demonstrates a direct and substantial interest in the subject matter of the proceeding or any part of the proceeding and does not unreasonably broaden the issues or prejudice any party to the proceeding, the Commission may grant leave to intervene or otherwise appear and participate in the proceeding with respect to the matters set forth in the petition.

4. If it appears during a proceeding that an intervener has no direct or substantial interest in the proceeding or that the public interest does not require the intervener's participation in the proceeding, the Commission may dismiss the intervener from the proceeding.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.892 Subpoenas. (NRS 233B.050)

1. Subpoenas to compel attendance of any person at a hearing or to require the production of books, records or other documents may be issued by the Commission.

2. Requests for the issuance of subpoenas must be made to the Commission in writing no less than 5 days prior to the hearing date, setting forth the reason and necessity for the subpoenas. Upon good cause shown, subpoenas may be issued at the request of any party to the hearing at any time. The Commission may issue any subpoenas on its own initiative without request.

3. All costs incident to subpoenas issued at the request of appellant must be borne by the appellant. The Commission may demand payment of those costs prior to the issuance of the subpoenas.

[Environmental Comm'n, Practice Rule 5, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 10, 1-9-76]—(Substituted in revision for NAC 445.990)

NAC 445B.8925 Briefs. (NRS 233B.050)

1. The Commission may, upon its motion or a motion by a party, order the parties to a hearing to file an opening brief, a response brief and a reply brief.

2. Except as otherwise provided by an order of the Commission, if the Commission orders the parties to a hearing to file briefs pursuant to subsection 1:

(a) The party which requested the hearing shall file an opening brief which does not exceed 20 pages in length.

(b) The Department and any other intervening party shall file a response brief which does not exceed 20 pages in length.

(c) The party which requested the hearing shall file a reply brief which does not exceed 10 pages in length. The Commission will consider only those portions of the reply brief which address directly matters or issues set forth in the response brief filed pursuant to paragraph (b).

3. The Commission may, upon its own motion or a motion by another party, order briefs to be filed before or after a hearing in addition to any briefs which the Commission orders pursuant to subsection 1.

4. The Commission will, for each brief which is ordered pursuant to this section, prescribe the period by which the briefs must be filed with the Commission and served on all parties.

5. Except as otherwise provided by subsection 6, each brief which is filed and served pursuant to an order of the Commission must be:

(a) Presented on white paper of standard quality and 8 1/2 inches by 11 inches in size;

(b) Typewritten or prepared in a manner that produces clear and permanent copies equivalent in legibility to printing;

(c) In 12-point font;

(d) Double-spaced, except that descriptions of real property may be single-spaced and quotations of more than 50 words must be indented and single-spaced;

(e) Paginated sequentially at the bottom of each page; and

(f) Accompanied by a certificate or acknowledgment of service or a certificate of mailing for all parties.

6. A brief which is ordered by the Commission pursuant to this section may be served on any other party by United States mail, electronic mail or facsimile.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004; A by R135-11, 5-30-2012)

NAC 445B.893 Panels to conduct certain hearings; decision of panel. (NRS 233B.050) Three or more members of the Commission constitute a proper panel, where appropriate, in accordance with NRS 445A.610 and 445B.350, and a majority of those present must concur in any decision. The decision will be in writing and is a public record.

[Environmental Comm'n, Practice Rule 6, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 11, 1-9-76]—(Substituted in revision for NAC 445.991)

NAC 445B.894 Change in time or place of hearing; informal disposition of matter; dismissal. (NRS 233B.050)

1. Upon good cause shown, the Commission may vacate and reset the time of hearing.

2. Upon good cause shown, the Commission may transfer the place of hearing to a more appropriate location, taking into consideration the convenience and fairness to the witnesses and the parties.

3. Unless otherwise provided by law, informal disposition may be made by all involved parties at any time of any contested case or matter.

4. The Commission may, after providing notice to each party, dismiss an appeal for want of prosecution on the motion of any party or on the motion of the Commission if the party filing the appeal has failed to bring the appeal to hearing within 1 year after filing the appeal with the Commission unless the parties have stipulated in writing to extend the period during which the hearing must take place.

[Environmental Comm'n, Practice Rule 7, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 12, 1-9-76]—(NAC A by R135-11, 5-30-2012)—(Substituted in revision for NAC 445.992)

NAC 445B.895 Appearance of parties; procedure at hearing. (NRS 233B.050)

1. The parties may appear in person and may be represented by an attorney.

2. An attorney who represents a party before the Commission in a contested case must be an active member of and in good standing with the State Bar of Nevada or associated with such a member.

3. All testimony must be given under oath and recorded verbatim pursuant to the provisions of NAC 445B.897.

4. The Commission:

(a) Will determine the order of the presentation of evidence; and

(b) May limit the time and scope of the examination of witnesses and disallow repetitive testimony.

5. Hearings are open to the public until such time as confidential information, within the meaning of chapter 445A, 445B or 459 of NRS or applicable sections of this chapter or chapter 445A or 459 of NAC, is admitted to the record, at which time the hearing will be closed.

[Environmental Comm'n, Practice Rule 8, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 13, 1-9-76]—(NAC A by R227-03, 4-20-2004; R135-11, 5-30-2012)

NAC 445B.8953 Conduct at hearing; maintenance of order. (NRS 233B.050)

1. A person who appears in a proceeding shall conform to the recognized standards of ethical and courteous conduct as determined by the Commission. All parties to a hearing, their counsel and the spectators shall conduct themselves in a respectful manner.

2. The Commission may take any action which it determines is necessary to maintain order during a hearing, including, without limitation:

(a) Excluding a party or the party's attorney or authorized representative from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.8957 Consolidation of proceedings. (NRS 233B.050)

1. The Commission may consolidate two or more proceedings if it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.

2. At a consolidated hearing, the Commission will determine the order in which the parties introduce evidence and present testimony.

3. If two or more parties have substantially similar interests and positions, the Commission may, at any time during the hearing, limit the number of witnesses who will be allowed to testify.

(Added to NAC by Environmental Comm'n by R227-03, eff. 4-20-2004)

NAC 445B.896 Findings of Commission. (NRS 233B.050)

1. At the conclusion of the hearing, the Commission may take the case under submission and will notify the appellant and any other party to the hearing of its findings and recommendations in writing within 30 days after the date of the hearing.

2. Final recommendations will be in writing and will separately state findings of fact and conclusions of law. Findings of fact and recommendations will be based upon substantial evidence. Findings of fact will include a concise statement of the evidentiary facts supporting the findings.

[Environmental Comm'n, Practice Rule 10, eff. 1-7-73; A 4-3-74; A and renumbered as Rule 15, 1-9-76]—(NAC A by R227-03, 4-20-2004)

NAC 445B.897 Record of hearing. (NRS 233B.050)

1. Each hearing must be recorded electronically. An electronic recording of the hearing must be made available for inspection or copying. A party who requests a copy of an electronic recording must pay the cost to copy the recording.

2. In addition to the provisions of subsection 1, a party may request that a hearing be recorded by a court reporter who is certified pursuant to chapter 656 of NRS. A party who requests that a hearing be recorded by a court reporter must pay the costs relating to the services of the court reporter, including the cost charged by the court reporter for providing a transcript of the hearing.

[Environmental Comm'n, Practice Rule 12, eff. 1-7-73; A and renumbered as Rule 11, 4-3-74; renumbered as Rule 16, 1-9-76]—(NAC A by R227-03, 4-20-2004)

NAC 445B.899 Petitions for reconsideration or rehearing. (NRS 233B.050)

1. A petition for reconsideration must specifically:

(a) Identify each portion of the challenged decision which the petitioner deems to be unlawful, unreasonable, or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. A petition for rehearing must:

(a) Allege that a decision is in error because of an incomplete or inaccurate record;

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced; and

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. A petition for reconsideration or rehearing of a decision must be served upon all parties of record within 15 days after the effective date of the decision.

4. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party of record in the proceeding within 5 days after the filing of the petition. The answer must be confined to the issues contained in the petition and served upon all parties of record. Proof of service must be attached to the answer.

5. The Commission will grant or deny a petition for reconsideration or rehearing within 10 days after the date of the filing of the petition. The denial of a petition may be on the record without a separate decision.

6. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged decision.

7. If the Commission grants a petition for reconsideration, it will reexamine the record and decision with regard to the issues on which reconsideration was granted and issue a modified final decision or affirm its original decision within 20 days after the petition is granted.

8. If the Commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final decision or affirm its original decision.

9. A modified final decision of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original decision which are not changed by the modified final decision.

10. A modified final decision of the Commission or the affirmation of an original decision of the Commission is a final decision for the purposes of judicial review.

(Added to NAC by Environmental Comm'n, eff. 11-9-95)

Readers Note: More information about the State Environmental Commission (SEC) is available on the SEC's website at: http://www.sec.nv.gov/index.htm

The online version of these Rules of Practice are posted at:
http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875