CLARK COUNTY NEVADA DEPARTMENT OF
AIR QUALITY MANAGEMENT
and the
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
.....x
In the Matter of:

NEVADA ENVIRONMENTAL COALITION, INC. SID A0019
and ROBERT W. HALL Comments re:
Proposed issuance of a Title V (40 CFR Part 70)
Operating Permit for Titanium Metals Corporation
by the Clark County Department of Air Quality Management,
November 30, 2003, Certificate of Service.
.....x

NEVADA ENVIRONMENTAL COALITION, INC.
AND ROBERT W. HALL COMMENTS AND EPA PETITION

INTRODUCTION

Petitioner Robert W. Hall ("Hall") as an individual, and in his capacity as president of the Nevada Environmental Coalition, Inc. ("NEC") (hereinafter "Petitioners"), hereby submits the following comments. This comment document is timely submitted in response to the public notice dated November 30, 2003 in the Las Vegas Review Journal regarding the proposed issuance of a Title V (40 CFR Part 70) Operating Permit to Titanium Metals Corporation (TIMET) for its Henderson Nevada stationary source by the Department of Air Quality Management (DAQM).[1] These comments are intended to provide the basis for an Environmental Protection Agency (EPA) timely objection to the issuance of the proposed permit pursuant to the requirements of 40 C.F.R. 70.4(3)(ix). In the alternative, Petitioners request that the Administrator terminate, modify or revoke the operating permit(s) for TIMET pursuant to the requirements of 40 C.F.R. § 70.4(3)(vi). In the event that the Administrator or Region IX does not take action on this petition as requested, Petitioners' intent is to file a direct appeal in the Ninth Circuit Court of Appeals. Petitioners request confirmation regarding the date the EPA commences its review process.

Petitioners request that this electronic/paper comment document be made a part of the administrative record for the approval or disapproval of a Title V Operating Permit for TIMET. This petition is submitted to the EPA, the DAQM, and others shown on the service list as comments in opposition to the issuance of a Part 70 Permit for TIMET. Petitioners request that this document be made a part of any subsequent local, state or federal administrative proceeding involving proposed Clean Air Act-related actions regarding TIMET.

[1] By DAQM Petitioners mean the Clark County Department of Air Quality Management and any preceding Clark County department or agency.

This comment document is also a request for the Administrator to implement a Clark County Federal Implementation Plan (FIP) pursuant to the non-discretionary requirements of 40 CFR §70.10 (a)(2). This comment document is submitted without prejudice to any right the Petitioners may have pursuant to any applicable law.

I. OBJECTIONS

The following is taken from the Federal Register notice regarding approval of the Clark County Part 70 Program. The excerpt generally answers the question, "What is the Operating Permit Program?"

According to the EPA,

> The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain **all applicable requirements** under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

The instant Notice of Proposed Action notices the intent of the Clark County Department of Air Quality Management ("DAQM") to issue a Part 70 Operating Permit to TIMET. By this notice, DAQM has memorialized a scheme to knowingly and willfully issue a permit to TIMET that is a legally insufficient and legally impermissible Part 70 Operating Permit. The DAQM has knowingly and willfully noticed an intent to issue a permit that does not contain "all applicable requirements." The process we describe herein is a continuation of the United States Environmental Protection Agency (EPA) aiding and abetting violations of our federal environmental laws by not objecting to this, and several previous, part 70 permits. The EPA has been on notice by the Petitioners since 1997 that the agency is knowingly and willfully failing and refusing to object to proposed permits that are legally insufficient for any lawful purpose.

The information provided by the DAQM includes the following statement. "Part 70 Operating Permit Based on: Titanium Metals Corporation's Part 70 Operating Permit Application, dated February 22, 1996; the revisions and amendments thereafter; and its local permits, including all the materials submitted therewith." Additionally from the Technical Support Document, "DAQM prepared this document in accordance with the latest DAQM guidelines, policies, and supervisory and managerial instructions, verbal and/or written…." At the time DAQM made those representations, DAQM knew and should have known that there is no record of a public notice and review process regarding the above-named documents. None of the comments or documents includes a complete Clean Air Act citation compliance review. DAQM simply overlooks bothersome regulatory requirements as if they don't apply to the source. The "Technical Support Document" is so misleading that not only is it not credible, the document is

not factual. The document is a knowing and willful evasion of the applicable requirements the source has ignored and continues to ignore.

According to DAQM Regulation 0, an "applicable requirement" means, among other things:

a) Any standard or requirement included in an applicable State Implementation Plan (SIP) approved by the EPA…
b) Any term or condition of any preconstruction permit.

DAQM is attempting to deny the public any due process regarding public notice, hearing or public involvement with the instant proposal to issue this Part 70 permit. DAQM is attempting to relax existing conditions, add previously unauthorized emissions, and skip the New Source Review (NSR) program under the cover of the Title V process. There is no evidence that the Section 12 and 16 "ATC/OP" issued to this source regarding numerous modifications ever completed a lawful public notice process. The TSD mentions several modifications that occurred during the 1970s, '80s, '90s, and into the 2000s. The DAQM is evading the public notice requirements of its own 1979 SIP. At the same time, page 22 of the TSD states "On April 23, 2003, DAQM approved issuance of ERCs for the shut down of Kroll Process and the Crushing and Leaching operations." The NEC alleges that the credits were approved illegally by the DAQM since the applicable regulations at the time required that credits could not be issued if the SIP submittal was not timely submitted. It is well known that DAQM has never submitted a SIP in a timely manner and worse, none since 1979 have ever been finally approved.

The instant proposed approval evades the county's 1979/81 EPA approved SIP by covering up the fact that TIMET has operated for years without full public disclosure by the DAQM of the non-compliance and enforcement Teflon the source has enjoyed for many years. At no time has the source complied with Section 15.14 of the SIP regarding Lowest Achievable Emission Rate (LAER) or federally enforceable emission reduction offsets. The County has failed and refused to subject TIMET's "ATC/OP" to the public notice process that is required by the 1979/81 EPA approved SIP. The magnitude of emissions from this source of air pollution required public involvement at the outset of the permitting process. These SIP requirements have largely been ignored by DAQM.

DAQM secretly issued the permits without public notice, hearing or public involvement in a knowing and willful scheme to defraud the public as well as other local, state and federal agencies. Page 22 of the TSD claims "This Title V OP is based on the Modification 4 ATC/OP." The Modification 4 ATC/OP does not comply with all SIP requirements (§15.14). The SIP requires the application of LAER on particulate sources of 5 tpy or more as well as significant sources of Carbon Monoxide (CO). This latest ATC/OP does not comply with the §15.14 SIP requirement for achieving LAER or enforceable emission reduction offsets. The actual permit contradicts DAQM. Page 17 of the permit states that the special conditions for TIMET were derived from "… a permit issued on November 25, 2003 by Clark County…." That permit secretly evaded the SIP requirements for LAER and federally enforceable offsets as well. Petitioners object to the statement regarding "supervisory and managerial instructions, verbal and/or written" That statement misleads in order to supersede and evade the agency's own SIP and the CAA requirements for non-attainment pollutants in a non-attainment area. The statement

is also an admission that there was no public involvement in the process of issuing "supervisory and managerial instructions, verbal and/or written"

Clark County is required to provide the EPA with the opportunity to review new ATCs and modifications that involve major sources in Clark County. To the extent that the EPA was provided with that opportunity, then the EPA would have known about the issuance of the misleading Modification 4 ATC/OP permit. In the alternative, if the EPA was not notified, then DAQM has misled the EPA as well as the public. Petitioner requests that the EPA turn this matter over its Inspector General, its internal law enforcement authorities and U.S. Department of Justice for the purpose of investigating the issues raised herein, determining the truth and taking appropriate action.

The application for a part 70 permit was "amended" and "revised." Petitioners object to amendments and revisions that include terms, limits, and conditions not previously contained in an Authority to Construct (ATC) that was legally issued pursuant to the 1979/81 EPA-approved SIP. The EPA either knew or should have known from their own administrative audits of DAQM or from the many comment and requests for administrative action Petitioners have filed since 1997[2] that DAQM is not a credible source of information regarding Part 70, SIP conformity or anything else of relevance. We cannot find evidence in the TSD or the proposed Part 70 permit that this source has ever received an ATC that complied with all applicable requirements of the EPA-approved SIP for Clark County Nevada.

II. RECENT EVENTS

Hall v. EPA, 273 F.3d 1146 (9th Cir. 2001), a relevant decision of the Ninth Circuit Court of Appeals

On August 29, 2001, the Ninth Circuit Court of Appeals vacated the EPA's proposal to approve DAQM's revisions to the state implementation plan ("SIP") rules submitted in 1999. The appeals court vacated Section 0, definitions; Section 12, pre-construction review for new or modified sources; and Section 58, the emission offset credit sections. The court made it clear that the Environmental Protection Agency ("EPA") had failed to justify its prior, proposed approval of the revisions to the SIP. The Clean Air Act (CAA §116) requires that amendments to SIP approved rules must be at least as stringent as the SIP sections the amendments replaced where cleaner air progress has not been demonstrated. In this instance, the most stringent regulations are the rule sections approved by EPA in 1979, and amended in 1981. This also meant that permits issued pursuant to less stringent local, shadow regulations are legally insufficient. There is no evidence of a legitimate permit issued pursuant to the 1979/81 EPA approved SIP rules.

In 1979, the EPA preliminarily approved State Implementation Plan (SIP) regulations including a set of AQD rules that were alleged to be as stringent as the 1979 SIP rules. The legal purpose at all times relevant was that of reaching cleaner air attainment. One of the approved rule sections,

[2] More than thirty-three pounds of comment and request for administrative action documents, exhibits and supporting documents that are now attached as exhibits to the 2002 Clark County, State of Nevada PM-10 and CO SIP submittals.

section 15, is a very stringent rule. Rule 15 involves pre-construction review of new or modified sources. DAQM's air pollution problem at that time the rule was adopted was serious enough to require a rule section 15 that was more stringent than minimum federal standards. Rule section 15 has been modified numerous times at the local level, but none of these latest Rule 15 amendments were ever successfully approved as an EPA approved SIP rule. DAQM references the most recent set of Section 15 Regulations as though they are approved SIP regulations when the agency knows that the only version of Section 15 is the 1979/81 version. At the time DAQM publicly noticed the instant proposed permit and the sham Modification 4 ATC/OP, DAQM knew that it was using a set of "shadow" regulations that are not a part of the 1979/81 EPA approved SIP. DAQM has no lawful authority to change or substitute SIP regulations while approving Part 70 applications or at any other time. In this instance, any inclusion or reference to regulations other than the 1979/81 EPA approved SIP regulations are misleading and a serious misrepresentation. Most of the proposed permit conditions do not cite or reference the 1979/81 EPA approved SIP rules as lawful authority. The current sham ATC/OP (the permit uses citations from this as the legal authority) was issued on the basis of bogus pre-construction regulations that were interposed for the purpose of misleading the public. The "shadow" regulations are interposed for the purpose of issuing permits that are less stringent and are legally insufficient. See CAA § 116. Any permit that relies on the "shadow" regulations is a misleading permit. The TSD makes it clear that the ATCs issued to this source are based upon Section 12, and not on the strict requirements of the applicable Section 15 of the EPA approved SIP.

In 1987, DAQM adopted a locally approved and much less stringent Section 12. DAQM has used the unapproved, local rule section 12 in order to grant and issue pre-construction permits since 1987. DAQM continues to ignore the EPA approved version of rule section 15. In the process, DAQM has knowingly and willfully evaded the Clean Air Act in a manner that would result in the application of criminal penalties if a commercial source were to take similar actions. Local, state and federal employees are not exempt from responsibility since there is no local, state or federal job description that includes misleading the public much less local, state and federal agencies.

On April 23, 1998, the Clark County District Board of Health (predecessor agency) repealed the EPA approved SIP Section 15 as a local rule in the process of approving the subsequently vacated sections 0, 12 and 58. The problem that DAQM has is that SIP Rule section 15 is the only EPA approved SIP rule regarding new source review. Instead of Rule 15, DAQM has relied upon the less stringent, "shadow" rule Section 12 in order to issue preconstruction permits assuming legally sufficient permits were issued at all. With the reliance on Section 12 for permitting, DAQM has no regulatory means to issue, implement or enforce its 1979/81 EPA approved SIP. Part 70 requires the application of EPA approved SIP regulations.

From 1987, DAQM and its predecessor agencies, the Clark County Health District's Air Quality Division (AQD) and Air Pollution Control Division (APCD) have ignored the federally approved rule section 15 SIP rule without having EPA approved SIP rules to replace rule section 15. Since 1987, APCD, AQD and DAQM have been living a lie with the EPA and the citizens of Clark County. DAQM has had a very strict, approved rule section 15 on paper that it has not enforced and has no intention of enforcing. At the same time that DAQM refused to enforce its EPA approved 1979/81 SIP regulations, DAQM had no problem accepting approximately three-

quarters of a million dollars a year in federal largess for the purpose of enforcing EPA approved regulations as the EPA's proxy in Clark County while each and every representation the County has made regarding compliance or conformity to the 1979/81 EPA approved SIP misleads.

APCD's, AQD's and DAQM's very accommodating management personnel have used the locally approved rule section 12 in a scheme to evade enforcement of its EPA approved state implementation plan (SIP) and the Clean Air Act. Clark County Nevada became the fastest growing area of the United States. In the process, management personnel have allowed air pollution sources to pollute beyond the limits mandated by law. DAQM have represented to the public and the EPA that its rule section 12 was more stringent than its federally approved SIP rule section 15 while knowing that was not true.

The EPA failed or refused to approve rule section 12 as an approved SIP rule until 1999. That approval process was so egregious the Ninth Circuit court of appeals vacated and remanded the submitted rule amendments to the EPA in 2001. "To the extent that Petitioners disapprove the EPA's action, it is because Petitioners question whether the EPA properly assessed the adequacy of the revised new source review program to the task of meeting current attainment requirements." All the while, DAQM ignored its approved SIP and used the much less stringent local rules in a highly successful effort to evade the federal laws they were paid by the EPA to enforce.

When AQD sought approval for Air Pollution Control District Regulation ("APCDR") rule sections 0, 12 and 58 in 1999, the spin that AQD management used was that the proposed amendments were more stringent and met federal standards. AQD failed to disclose how much less stringent the proposed amendments were than the replaced and more stringent Section 15. If AQD had enforced Section 15, the county would now be closer to attainment of the NAAQS. The EPA wanted to believe, so they ignored the unambiguous requirements of section 116 of the CAA and approved rule sections 0, 12 and 58 while rescinding the 1979/81/82 rule section 15.

When the EPA granted preliminary approval of the 1999 submitted SIP amendments, the EPA made press releases and published the preliminary approval in the Federal Register. When the Ninth Circuit Court of Appeals vacated and remanded the submitted SIP to the EPA, the EPA kept quiet since the EPA had unlawfully encouraged Clark County to go ahead and use the SIP submittals as the basis for permitting and enforcement despite the fact they were less stringent than the 1979/81 EPA approved SIP. The EPA has not said or done anything publicly regarding the sanctions that were pending in 1999 or the fact that Clark County and Nevada are in a SIP lapse without the availability of lawful extensions of time.

The date of EPA's proposed Part 70 approval was October 10, 2001, well after the date of the Ninth Circuit Court of Appeals August 29, 2001 decision to vacate the EPA approval of Sections 0, 12, & 58. The EPA failed to note this adverse appeals court event in its FR notice. The EPA erred in proposing approval of a program that does not rely upon a valid, approved, and enforceable SIP to issue permits. On the one hand, the EPA has proposed $100,000,000 penalty findings and notices of violation ("NOVs"). On the other hand, the EPA let AQD and now DAQM get away with knowing and willful evasions of all of the applicable laws. Each time that happens, the EPA is aiding and abetting what Petitioners have every reason to believe are

criminal acts.

Additional Objections To The Proposed Permit

The following are Petitioners' additional objections to the proposed Part 70 permit. Our objections generally follow the numerical order of 40 CFR §70.

III. 40 CFR §70.1 PROGRAM OVERVIEW

Section 70.1 prescribes the "Program Overview" of a Title V (Part 70) program, while Section 70.2 provides definitions. According to Section 70.1 (b), "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

According to 40 CFR §70.1 (c), "No permit, however, can be less stringent than necessary to meet all applicable requirements."

"Applicable Requirement" is defined within 40 CFR §70.2 and includes several specific requirements. One such requirement is "Any standard or other requirement provided for in the applicable **implementation plan approved or promulgated by EPA** through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter."

An additional requirement within the definition of Applicable Requirement is "Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act."

On information and belief, the source has not received a permit that complied with the EPA approved SIP or that was issued pursuant to an EPA approved SIP. Clearly, the current ATC/OP is not a "preconstruction permit," did not contain a full public disclosure by DAQM of LAER and federally enforceable emission reduction offsets, and would have been based upon the less stringent, shadow regulations of Section 12 in use by the DAQM at the time of issuance. Petitioners object to every condition in the proposed permit that cites the source's "NSR" or "OP" as the legal authority for the condition. These objections cover virtually every condition in "Part III Special Conditions" of the instant part 70 permit. The permit lacks citations for every SIP requirement. There are no conditions that cite Section 15.14 of the SIP as the basis for the condition. Thus, we conclude that DAQM has evaded Section 15.14's requirements for LAER and emission reduction offsets.

The SIP requires LAER for those emissions of total suspended particulate (TSP) and CO associated with modifications that occurred after the late 1970s. EPA-approved emission reduction offsets were also required for these TSP and CO emissions. We cannot find evidence that the emission reduction offsets were achieved. On opinion and belief, Clark County and TIMET have evaded the discussion of these requirements.

To add further insult to a process that has evolved in secrecy, DAQM has continued to conceal

this information from the public. We can find evidence that few, if any, of the listed modifications and their associated permits complied with the public notice requirements. After the fact, the DAQM secretly issued yet another permit to try and "justify" their actions from the past. In the process, the public was denied the information that LAER and federally enforceable emission reduction offsets continued to be evaded. DAQM issued the permit without public notice specifically for the purpose of not allowing public scrutiny of yet another sham permit.

Petitioners object to the lack of public review for LAER and offsets for all CO and particulate matter emissions. Petitioners object to the lack of public review for LAER and offsets for all emissions, and their exclusion from the permit. Petitioners object to the lack of federally enforceable emission offsets. Petitioners object to these ongoing violations of the SIP Section 15.14 and CAA §173.

As noted above, DAQM's predecessor agency AQD rescinded its own EPA approved SIP rule section 15. The appeals court vacated the 1999 proposed SIP regulation additions/amendments. Clark County has long been in a SIP lapse. DAQM does not have the lawful authority to issue "preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I." DAQM's local rules contain many regulations that are less stringent than its previous approved SIP and federal requirements. DAQM has failed to submit the side-by-side comparison that provides evidence to the contrary. The burden is on DAQM to provide evidence that their proposed rules are at least as stringent as the 1979/81 EPA approved SIP rules and that a permit should be issued.

The definition for Applicable requirement also includes "Any standard or other requirement under section 111 or the Act, including section 111 (d)"; and "Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under Section 112 (r) (7) of the Act."

DAQM cannot issue permits that comply with any approved SIP that includes section 111 requirements because DAQM does not have the required SIP regulation and has long ignored the 1979/81 EPA approved SIP rules in any event. DAQM does not have any authority whatsoever to administer or enforce the section 112(r) requirements of the Act, since the responsible (we hesitate to call any Nevada agency responsible) agency for section 112(r) is the Nevada Department of Environmental Protection (NDEP).

Many prior part 70 permits and their TSDs included a listing of when each emission unit was placed into service. This TSD for this source does not include that pertinent information. The only reason to not include this pertinent information is to keep it out of the eye of the public. The NEC believes that many of these emission units were placed into service at a time when they would be subject to the 1979/81 SIP, including LAER and offsets. The permit includes no information whatsoever about federal offsets or even compliance with the local road-paving sham offset program. The NEC requested the complete TSD. Conspicuously absent from the information that DAQM submitted were all Appendices of the TSD. For this simple act of omission on DAQM's part, the NEC requires more time to review these documents.

Summary Of Section 70.1 Objections

DAQM does not have rules that have been approved by the EPA sufficient to meet the Title I requirements of the 1990 Clean Air Act Amendments. We have noted that the District Board of Health has previously repealed the previous EPA-approved Section 15. Clark County cannot and will not enforce regulations that it has already rescinded. Proposed SIP rules must be noticed to the public as proposed SIP rules. They cannot be lawfully slipped into the SIP without public notice, without compliance with the Administrative Procedures Act ("APA") and NRS 233B. It is legally insufficient to attempt a back door approval of local rules as cover for the fact that there is an approved Nevada SIP with an EPA approved section 15 among a set of rules that starts with definitions.

Clark County had authority to regulate the source and chose to evade the toughest requirements for LAER and offsets for the TSP (including PM_{10}) emissions. Only after the fact, the DAQM sheepishly and secretly tried to issue a permit that would somehow "justify" their well-documented malfeasance. Clark County is once again caught deceiving the public, violating the requirements of Section 173 of the CAA and the 1979/81 EPA approved SIP. Petitioners object to the elimination of these strict requirements from this permit. The site has never been thoroughly or legally permitted with a public notice and strict enforcement action should have been accomplished years ago. The proposed permit is simply a "sweep it under the rug" attempt to hide the issue from public scrutiny. Sadly, the EPA is now in the position of conspiring with those who are well known to the EPA to have a long history of ignoring federal environmental laws. We are talking about those who have no concern at all with making false statements in a conspiracy to commit a parade of criminal acts. Congress has funded the EPA to enforce our nation's environmental laws. The EPA has taken the money and done exactly the opposite.

IV. ADDITIONAL OBJECTIONS TO PERMIT CONDITIONS

According to proposed permit condition A-11, "Any request for a part 70 permit modification shall comply with the requirements of AQR Section 12, SIP-approved AQR Section 15 and AQR Section 19." This is yet another example of DAQM's evasion of the intent of the Part 70 Program. As Petitioners have pointed out, the CCHD rescinded Section 15 in 1998. DAQM has no business to now suggest it can enforce regulations that have been repealed. Petitioners object to Condition A-11.

Petitioners protest the "Compliance Certification" condition found at A-9. Within the condition, is a "… certification with terms and conditions contained in the operating permit…." The certification is meaningless. Petitioners request that the certification be based upon compliance with "all applicable requirements" and not just a watered-down Part 70 permit that has had a few requirements intentionally "overlooked" by DAQM management. Petitioners have expressed concern regarding DAQM management actions in the past. The instant proposed permit stands as proof that nothing has changed. If anything, the issues highlighted herein suggest institutional malfeasance. As Petitioners have alleged, the source is not in compliance with LAER or offsets for CO or TSP emissions. The source cannot certify compliance with SIP Section 15.14 or CAA Section 173. A certification of compliance based on the terms and conditions of a deficient permit allows the source to certify compliance while ignoring additional applicable requirements found at SIP Section 15.14 or CAA §173.

Petitioners object to the proposed permit Condition A-20 that states in part "… believe that an emission in excess of that allowed by the DAQM is occurring." Since current DAQM regulations are less stringent than the 1979/81 EPA approved SIP, the more stringent standard should apply.

Petitioners object to proposed permit Condition A-16 that gives the local Control Officer any authority whatsoever to determine whether information is eligible for confidential treatment. That requirement is inconsistent with 40 CFR §2.301.

Petitioners object to every proposed permit condition that uses "NSR ATC/OP" as a basis for authority for the condition. That permit is not a "preconstruction permit." It is an after the fact attempt by DAQM to justify past malfeasance. NSR ATC/OP is a sham permit, it is incomplete, and it was not issued pursuant to public notice. DAQM's effort to streamline the process is simply an excuse to evade the part of the CAA that makes the Act enforceable. That part is the public involvement requirements of the CAA. By avoiding public notice, the public is left out of the role that it plays in identifying the missing SIP requirements noted above.

Petitioners object to Part II of the proposed permit. The listed authority, AQR §§19.2.1 and 19.3.3.3 are not the appropriate legal authority for authorizing emission units in stationary sources. Section 19 requirements are not "applicable requirements" and should not replace the applicable requirements of the SIP. Only those emission units that pre-date the CAA or are listed within a legally valid ATC can be transferred to a Part 70 permit. Otherwise, the stationary source must add emission units consistent with the NSR requirements of the SIP.

Petitioner's object that the proposed permit lacks a Compliance Plan, an applicable requirement. No mention was made of all the applicable requirements for which the source is not in compliance. For example, the TSD discusses the parts of the Section 15 SIP that are favorable to the applicant. Discussion and regulatory citations regarding non-attainment area pollutants (Section 15.14) are missing from the TSD and from the proposed Part 70 permit.

Petitioners object to the lack of an explicit, side-by-side compliance demonstration with all requirements of EPA approved SIP Section 15, 40 CFR Part 60 including applicable subparts A and other applicable New Source Performance Standards. A streamlining demonstration and "permit shield" are missing from the literature and proposed permit as supplied by DAQM.

All the requirements listed above are "applicable requirements." "No permit, however, can be less stringent than necessary to meet all applicable requirements" (40 CFR §70(c)).

DAQM cannot lawfully issue a Pre-construction Permit or a valid Part 70 permit that "meets all applicable requirements." For these reasons, and more that follow, the proposed permit must be denied. There is no legally sufficient basis to approve the permit since it was based upon local rules that are less stringent than SIP requirements. None of the pre-construction monitoring requirements of the SIP are mentioned or described or complied with in the instant permit.

V. 40 CFR §70.5 PERMIT APPLICATIONS

The NEC believes that most stationary sources are honorable, law-abiding companies that are

misled by DAQM regarding CAA responsibilities. The focus of this comment is on regulator malfeasance and less so, the stationary source's efforts to comply with complicated regulations. DAQM remains a dysfunctional, air pollution enforcement agency. DAQM is an agency of fluff over substance, quantity over quality, and personal paychecks over integrity.

Regarding the requirement for compliance certification found at 40 CFR §70.5(c) (9) (i), "A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114 (a) (3) of the Act" is required." Paragraph (d) of the section states the requirement that "This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

Neither DAQM nor the Source has lawfully fulfilled the certification requirements. Neither the source nor the DAQM can comply with the certification requirement and that is probably the reason the certification is missing. DAQM does not have any idea what SIP or SIP regulations they are attempting to comply with. That responsibility lies with DAQM, the State of Nevada and the EPA. Without compliance with "all applicable requirements," and without approved SIP rules, statements of compliance mislead. The fact that the site was never legally permitted to include requirements for offsets or LAER are but two examples of applicable requirements that have not been met.

Summary Of Section 70.5 Objections

Petitioners object to the notion that any source in Clark County can certify compliance with all applicable requirements short of a thorough compliance plan. The DAQM and its predecessor agencies have put businesses regulated by DAQM in a precarious legal (civil and criminal) situation that is now out of control. There is no lawful basis for the operation of this facility. The only solution, short of civil lawsuits, is a federal operating permit plan initiated sooner, rather than later. Unfortunately, now that EPA Region IX has decided to join DAQM in the gross evasion of our environmental laws, the few remaining options for the public appear to involve legal actions.

VI. 40 CFR §70.6 PERMIT CONTENT

According to 40 CFR §70.6 (a) (1), each permit issued shall include "Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." Subparagraph i and ii go on to point out that duplicate requirements and overlapping requirements must be reconciled. Without prejudice, the DAQM permit evades many requirements and does not clearly include the "streamlining" demonstration prescribed by EPA.

As an example of DAQM's failure to require LAER, page 10 of the proposed permit lists various emission units and their Emission Control levels. The permit lists the PM-10 limits for the source as 51.37 tpy, thus making the source significant and subject to LAER per Section 15.14 of the SIP. Despite the requirement for LAER, all emission units A01 thru A09 are shown to have 0% emission control for PM-10.

DAQM and its predecessor agencies have issued permits pursuant to APCR Section 12 since 1987. Section 12 contains regulations that are not federally enforceable, are not SIP approved, and are less stringent than approved SIP requirements. Consequently, all Part 70 permits that were issued by DAQM that are based on the Section 12 since 1987, are misleading to the public, unlawful, and do not comply with the requirement to "assure compliance with all applicable requirements at the time of permit issuance."

The NEC objects to Condition C-8 of Part III. The requirement of LAER is not met. Rather than test for control efficiency, compliance is determined by at least 90% uptime and less than 10% bypass. No mention of control deficiency and LAER is in the permit.

The NEC objects to Condition C-20 regarding a "design" of a boiler. The important criterion is not the design but the actual emissions.

The NEC objects to Condition C-24 and there has been no mention of a "nonmetallic mineral processing" plant at the site.

The NEC objects to Condition C32 regarding unpaved roads. Condition C-31 has established that LAER requires paved roads. Unpaved roads do not comply with LAER.

The NEC objects to Condition D-3 regarding "low sulfur coke." Low sulfur coke is undefined in the permit.

The NEC objects to Condition D-10 of the permit regarding Granite Construction or Chemical Lime. This condition appears to demonstrate the sloppiness of DAQM management and their "quantity over quality" approach to permitting. We request that DAQM define exactly what Chemical Lime and/or Granite Construction have to do with this source.

The NEC objects to Condition G-8 and G-9 as being useless and/or showing non-compliance with 40 CFR Part 60 Appendix A requirements, thus requiring the missing compliance plan.

The NEC objects to Condition H-1 and H-2 since they reference a SIP that has been rescinded by Clark County. Additionally, it lists Section 0 in the definitions without mentioning the EPA approved Section 1 of the SIP.

The NEC objects to Condition H-6 of the permit regarding local offset requirements. The source is subject to Federally enforceable emission offsets and not the local, sham, road paving credits that are listed. Additionally, the DAQM is attempting to extort the source to sign a blank check by not specifying the amount of credits that were due with the earlier modifications yet are now trying to deny the issuance of a permit unless the source will comply with bogus local credit requirements.

The NEC objects to Condition H-8 which specifies compliance "in a timely manner" but fails to define what "in a timely manner" means in terms of the enforcement process.

Compliance requirements are missing from the permit. The proposed permit allows non-quantifiable means of measurement (emission factors) in place of performance tests and CEMS that would quantify emissions.

Summary Of Section 70.6 Objections

DAQM does not have an approved SIP or authority to issue New Source Review (NSR) or PSD permits. NSR and PSD requirements are applicable requirements under the Act. New Source Performance Standards are additional applicable requirements. DAQM does not provide a clear demonstration, requirement by requirement, that all applicable requirements are addressed. Every attempt that DAQM/AQD has made to issue part 70 permits does not comply with the requirement to "assure compliance with all applicable requirements." This instant action does not correct the deficiencies at DAQM. LAER and federally enforceable emission reduction offset requirements are two of the most glaring deficiencies in Clark County.

VII. 40 CFR §70.7 PERMIT ISSUANCE, RENEWAL, REOPENING, AND REVISION

According to 40 CFR §70.7 (a)(1)(iv), "The conditions of the permit must provide for compliance with all applicable requirements of this part."

Under the definition of "applicable requirement" in 40 CFR §70.2, requirements of an approved SIP are an applicable requirement. DAQM does not have an approved SIP that meets the 1990 amendments to the Clean Act ("CAA"). DAQM no longer has a local Rule 15 after the Clark County Board of Health repealed the only approved rule Section 15 on April 23, 1998. Completely absent from the permit are citations to the CAA and to 40 CFR part 60. The 1979 SIP has long since lapsed.

Summary Of Section 70.7 Objections

DAQM has not included references or citations to EPA approved SIP (section 15), or to the CAA, or to 40 CFR part 60 for all requirements.

VIII. 40 CFR §70.8 PERMIT REVIEW BY EPA AND AFFECTED STATES

According to 40 CFR §70.8 (c) (1), "The Administrator will object to the issuance of any proposed permit determined by the Administrator not to comply with applicable requirements or requirements under this part."

According to 40 CFR §70.8(c) (3) (ii), "Failure of the permitting authority to do any of the following also shall constitute grounds for an objection: (ii) Submit any information necessary to review adequately the proposed permit…."

Petitioners' object to the fact that EPA has not denied any of the part 70 permits that were issued by Clark County. All such permits were issued without compliance or legal reference to the EPA approved SIP. Petitioners object to the fact that the EPA has not taken any sanction against Clark County despite a huge amount of information that sanctions were applicable a long, long time

ago. There has not been any penalty for a failure to conform and comply. That failure is a loud and clear "business as usual signal" to Clark County.

Summary Of Section 70.8 Objections

Petitioners allege that the EPA is failing in its non-discretionary responsibility to object or deny permits that do not comply with "all applicable requirements." The instant permit does not comply with "all applicable requirements." The NEC requests that the EPA object to the issuance of the proposed part 70 permit.

IX. 40 CFR §70.9 FEE DETERMINATION AND CERTIFICATION

According to 40 CFR §70.9(a), "The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." According to 40 CFR 70.9(b) (1) "The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs." The required fee schedule is directed at sources of air pollution, not the public.

The AQD and DAQM program has squandered approximately $2.1 million by not timely issuing Part 70 permits within the required 3-year period. The fees are inadequate as demonstrated by the agency's issuance of only a few high-quality permits. In the alternative, the fees are adequate, but the agency has squandered the money on unrelated items such as attorney fees to defend the agency from its own malfeasance. Regardless, not all permits have been issued within the 3-year period as required. Now, the requirement to issue all permits by the Dec. 31, 2003 "deadline" is obviously the driving force behind issuing yet another deficient, quantity over quality, permit.

DAQM operates a failed program as demonstrated by the failure to issue legally sufficient permits in a timely manner. With excessive turnover of part 70 permit writers since 1997, DAQM's part 70 program is legally and administratively deficient and insufficient.

Summary Of Section 70.9 Objections

DAQM would have collected more than enough money to issue all the part 70 permits, if the pre-construction permits were valid. Unfortunately DAQM does not have valid permits issued according to approved SIPs. DAQM's management has squandered approximately $2.1 million by paying for salaries of people that continue to allow deficient permits to be issued. The program is recognized locally as a dismal, deliberate failure.

X. 40 CFR §70.10 FEDERAL OVERSIGHT AND SANCTIONS

DAQM and AQD have had almost 8 years to prepare an approvable part 70 permit. Petitioners were provided with only 30 days to review the proposed permit. Despite that handicap, Petitioners have found deficiencies that render the permit fatally deficient. As a result of the deficiencies noted herein, petitioners respectfully request that all of the requirements of 40 CFR

§70.10 be implemented without delay.

40 CFR §70.10(c) provides the criteria for the Administrator to withdraw approval of State programs. One of those criteria is found at Section 70.10 c (1) (i) which states that the Administrator may withdraw approval "Where the permitting authority's legal authority no longer meets the requirements of this part…." The DAQM program no longer meets the requirements of a program that justifies the Administrator's continued support.

Summary Of Section 70.10 Objections

Petitioners object to the lack of EPA intervention based upon the requirements of Section 70.10. The NEC requests EPA action, including sanctions as prescribed by CAA Section 179(b) (2) without further delay.

XI. SUPPLEMENTAL ISSUES

On January 23, 1997, the Clark County District Board of Health published Air Pollution Control Regulations. The regulations were preceded by a revision list. The revision lists includes revisions for Section 15 on June 28, 1979, September 3, 1981 and May 27, 1993. The actual Section 15 - Source Registration included with the published sections was not revised for SIP purposes after 1982. The January 23, 1997 version contains sub-sections that are not in previous versions of Rule 15. They include sub-sections 15.14.4.3.2, 15.14.4.3.3 and 15.14.4.3.4. Other EPA unapproved sections, with identical numbers, have been replaced by DAQM/AQD and have been used deceivingly by DAQM to whitewash the true EPA approved SIP requirements.

On August 3, 1994, David P. Howekamp, Director, Air & Toxics Division, EPA sent a "copy of Clark's applicable State Implementation Proposed regulation amendments (SIP)" along with a cover letter to Michael Naylor, Director, DAQM Air Pollution Control District. The copy does not include sub-sections 15.14.4.3.2, 15.14.4.3.3 and 15.14.4.3.4. The copy included a Clark County Applicable State Implementation Plan proposed regulation amendments Action Log that shows section 15 - Source Registration approved on 04/14/81, 46 FR 21766. It also shows sub-section 15.14 as having been approved 04/14/81, 46 FR 21766 and again on 06/21/82, 47 FR 26621.

In response to a request by the Nevada Environmental Coalition, Inc. (NEC), Andrew Steckel, Chief, Rulemaking Office, sent a copy of a DAQM Applicable State Implementation Proposed regulation amendments Action Log, Last Updated 01/27/99. The information for Section 15 includes the following approval dates and Federal Register (FR) citations.

15.1-15.6	06/21/82	47 FR 26621
15.6.1.4-15.6.1.5	08/27/81	46 FR 43142
15.6.1.6-15.6.2.5	06/21/82	47 FR 26621
15.6.2.6	08/27/81	46 FR 43142
15.6.3-15.6.3.5	06/21/82	47 FR 26621
15.6.4-15.6.5	08/27/81	46 FR 43142
15.6.6-15.12	06/21/82	47 FR 26621

15.3	Prevention of Significant Deterioration	
15.13.1-15.13.5	06/21/82	47 FR 26621
14.13.6	(Not assigned)	
15.13.7-15.13.15	06/21/82	47 FR 26621
15.14	08/27/81	46 FR 43142
15.14.1	06/21/82	47 FR 26621
15.14.1.1	08/27/81	46 FR 43142
15.14.1.2	06/21/82	47 FR 26621
15.14.2-15.14.3	08/27/81	46 FR 43142
15.14.3.1-15.14.4.1	06/21/82	47 FR 26621
15.14.4.2	08/27/81	46 FR 43142
15.14.4.3	06/21/82	47 FR 26621
15.14.4.3.1-15.14.4.3.5	08/27/81	46 FR 43142

The 01/27/99 updated list shows only two approval dates and two FR publications for the entire rule fifteen. The 1994 Howekamp document lists the 06/21/82 47 FR 26621 approval and a 04/14/81 46 FR 21766 approval but not the 08/27/81 46 FR 43142 approval listed in the Steckel 01/27/99 update. The June 28, 1979, September 3, 1981 and May 27, 1993 dates published by the APCD or AQD appear to be local attempts to rewrite a federally approved SIP regulation without the benefit of EPA approval. APCD and AQD did not use EPA approved SIP Section 15. They used a locally modified Section 15 until they had a better idea with the unapproved rule section 12. The mixing of EPA approved SIP rule sections with unapproved SIP rule sections was not wise, particularly while Sections 0, 12 & 58 plus the rescission of Section 15 were on appeal

DAQM's attempt to amend vacated rules is legally insufficient. The applicant cannot lawfully do that as long as important, approved SIP rules are vacated and other rule sections were modified without EPA approval.

XII. THE SIGNIFICANCE OF THE KERR-McGEE FINDING AND NOTICE OF VIOLATION (NOV)

On September 27, 2001, the U.S. Environmental Protection Agency (EPA) issued a Finding and Notice of Violation (NOV) against Kerr-McGee Chemical L.L.C. ("KMC"), for violations at its inorganic chemical manufacturing facility in Henderson, Nevada. The NOV found violations of the Clean Air Act's New Source Review (NSR) program going back to May 1994. The penalties levied of $25,000.00 to $27,500 per day go back to 1994 for each violation and are subject to administrative mitigation. The EPA alleged that Kerr-McGee violated EPA approved Clean Air Act State Implementation Plan (SIP) rule sections from the 1979 SIP (amended in 1981/82). The NOV cited two instances where the Clark County Health District's Air Quality Division (the predecessor to DAQM) issued permits to Kerr-McGee in contradiction to the approved SIP regulations. The NOV acknowledges that local rules approved as part of the approved SIP on May 11, 1999 were vacated and remanded in Hall v. EPA, No. 99-70853, 263 F.3d 926 superseded by 273 F.3d 1146 (9th Cir. 2001).

This NOV directly contradicts the Department of Air Quality Management's contention that it

may issue NSR permits based on local or unapproved SIP rules. There is a strong message in the NOV that sources of air pollution that rely upon permits issued by authority of unapproved SIP regulations are at substantial risk. The NOV notes that the Clean Air Act provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement more than 30 days after the date of issuance of a Notice of Violation. A copy of the Kerr-McGee NOV may be found on the NEC Web site at www.necnev.org .

The following is a partial list of Las Vegas Valley sources that received findings and notices of violation from the EPA. The fact that the EPA had to levy NOVs after APCD or AQD granted permits to these sources does not add to DAQM's enforcement credibility.

Nevada Cogeneration, #1 and #2, NOx
Titanium Metals (TIMET), SO2
Lasco Bathware, VOC
Wells Cargo, PM10
Las Vegas Paving, PM10
Nevada Ready Mix, PM10
Southern Nevada Paving, PM10
Capital Cabinets, VOC
J.R. Simplot Silica, SO2
CalnevPipeline, VOC
Chemical Lime Co., PM10, SO2, NOx
Kerr-McGeeChemical, CO
Environmental Technologies of Nevada, Inc., PM10

Regulator negligence and malfeasance has left DAQM citizens without the protections ordinarily afforded by approved SIPs. The only way citizens have to ensure that actions within polluted areas will not degrade those areas is by legally sufficient SIPs that are not misleading. The lack of approved SIPs undercuts the National Environmental Policy Act ("NEPA") and the CAA's cumulative environmental impact or conformity provisions. There are no EPA approved proposed regulation amendments sufficient to achieve the NAAQS. No federal agency operating in Clark County has ever completed a legally sufficient transportation or general conformity determination. Even if conformity determinations were completed, they could not conform to CAA 1990 amendment SIPs that do not exist. Each DAQM certification of compliance with any SIP that DAQM has ever made is misleading to the EPA, other federal agencies and the citizens who live in or visit Clark County. The most important misrepresentation is that there is compliance anywhere when there is no cumulative environmental impact or Clean Air Act conformity determinations. Petitioners ask conformity to what? The EPA has allowed never-ending misrepresentations to continue beyond all statutory boundaries.

In full recognition of this regulatory void, valley promoters of air pollution sources have cynically championed projects that violate the NAAQS. Legally sufficient SIPs in Clark County's numerous nonattainment areas would have prevented violations of the NAAQS. No legally sufficient SIP would permit the current levels of air pollution emitted by county sources of air pollution. As but one more example, the Las Vegas Valley has had numerous exceedances of ozone. A legitimate regulatory effort would have declared the area non-attainment years ago.

Clark County, with the added help of EPA, has allowed thousands of additional tons of air pollution to be added to a bogus emissions inventory, above and beyond the levels of pollution that resulted in violations of the NAAQS.

XIII. RELIEF SOUGHT

Petitioner requests that the instant application be denied. Petitioner requests that the EPA reverse the proposed full approval and replace the local program with a Federal Operating Permit program, as required by law.

Petitioner claims all of his rights including but not limited to those found in NEPA, the federal Administrative Procedures Act ("APA") and the Clean Air Act "(CAA").

Petitioner further requests full EPA compliance with the language, spirit and intent of the Clean Air Act §113, 42 U.S.C. § 7413, Federal Enforcement, and §116 Retention of State Authority. Over the last several years, Petitioner has provided both the EPA Administrator and the Region IX Administrator with credible information that DAQM's violations of the Clean Air Act "are so widespread that such violations appear to result from a failure of the State in which the proposed regulation amendments or permit program applies to enforce the proposed regulation amendments or permit program effectively." Approving a relaxed SIP contrary to CAA §116 would serve no purpose other than to aid and abet continuing civil and criminal violations of our nation's environmental laws.

DAQM remains dysfunctional primarily because of its failure to attract and retain experienced personnel who have the ability to operate the division according to the language, spirit and intent of the Clean Air Act. Neither the EPA nor the Petitioners can do the task for them. Approving applications that clearly should not be approved is a reasonable option to DAQM.

Petitioner requests that the EPA implement a Federal Implementation Plan regulation amendments (FIP) pursuant to §110(c) (1), and apply Sanctions §110(m) pursuant to §179(a), supra, without further delay. That means now. That does not mean months or years from now. DAQM has met all of the requirements for a FIP many times over. The public health and safety is held hostage while bureaucrats procrastinate.

In making this request in our own interest, Petitioners honor those who have lost their lives or whose quality of life has declined as a proximate result of the acts of a few. Petitioners especially honor the memories of Cynthia Mikes and of Elizabeth Gilmartin. May they rest in peace.

Dated: December 29, 2003 at Las Vegas, Nevada

Respectfully submitted,

/s/ Robert W. Hall
Robert W. Hall, as an Individual and as
President, Nevada Environmental Coalition, Inc.