

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2 In Re:

3)
4 Appeal of Class I Air Quality Operating Permit to)
5 Construct: Permit No. AP4953-2525)
6 Jungo Land & Investments, Inc.)

ORDER GRANTING MOTION TO
DISMISS

7 This matter came before a panel of the State Environmental Commission
8 (“Commission”) on May 21, 2010. Appellant Phil Jacka (“Jacka”) appeared and represented
9 himself. Appellants Bob Dolan, Esq. (“Dolan”) and Massey Mayo, Esq. appeared and
10 represented themselves. Respondent Nevada Division of Environmental Protection (“NDEP”)
11 appeared and was represented by its counsel, Nhu Nguyen, Esq. Intervener Jungo Land &
12 Investments, Inc. (“Jungo”) appeared and was represented by its counsel, John Frankovich,
13 Esq. and Debbie A. Leonard, Esq. Appellants Jacka, Dolan and Mayo appealed NDEP’s
14 issuance on March 5, 2010 of Permit No. AP4953-2525 to Jungo for an air quality operating
15 permit to construct a Class I facility in Humboldt County, Nevada.

16 As part of its brief, Jungo moved to dismiss the appeals on several grounds, arguing
17 that appellants were not “aggrieved” persons under NRS 445B.340 and NRS 445B.360 and
18 that appellants failed to identify any legal or factual basis for denying Jungo’s permit. After
19 hearing arguments from appellants Mayo and Dolan and counsel for Jungo regarding the
20 standing issue, the Commission denied Jungo’s motion to dismiss. The Commission noted
21 that it has taken a broad view of the standing issue during its almost 40 year history and
22 allowed members of the public to appeal NDEP’s decisions. The Commission held its
23 decision on Jungo’s motion to dismiss, based on appellants’ failure to identify a legal or factual
24 basis for denying Jungo’s permit, in abeyance until they heard appellants’ case-in-chief. The
25 Commission then heard opening statements, followed by testimony from Jacka, Dolan,
26 Michael Elges, Jonathan McRae, Elizabeth Austin and Jim French.

27 After appellants presented their case-in-chief, counsel for Jungo renewed its motion to
28 dismiss because appellants had not presented evidence that a statute or regulation had been

1 violated in issuing the permit. The Commission heard arguments from counsel for Jungo and
2 NDEP in support of the motion and appellant Dolan's opposition. The Commission found that
3 Jungo indicated the methods it would use to control dust in its dust control plan, but there
4 were other possible methods listed in the plan, such as wind fences, that Jungo did not
5 propose to use. NDEP's Bureau of Air Quality did not tell Jungo how to control its dust
6 emissions, but that it must control its dust. Permit No. AP4953-2525 states: "The Permittee
7 [Jungo] may not cause or permit the handling, transporting, or storing of any material in a
8 manner that allows or may allow controllable particulate matter to become airborne." See
9 NAC 445B.22037. If Jungo does not comply with the permit, it is subject to enforcement
10 action. See *State Environmental Commission v. John Lawrence Nevada*, 108 Nev. 341, 834
11 P.2d 408 (1992). NDEP's authority to issue a permit is governed by NAC 445B.318(3), which
12 provides that an operating permit must be granted if the specified regulatory requirements are
13 met, and the underlying regulations were met in this case.

14 IT IS THEREFORE ORDERED that Jungo's motion to dismiss is GRANTED and
15 NDEP's issuance of Permit No. AP4953-2525 to Jungo for an air quality operating permit to
16 construct a Class I facility in Humboldt County, Nevada is AFFIRMED.

17 Dated this 9th day of June, 2010.

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19 _____
20 Lew Dodgion, Panel Chair
21 State Environmental Commission
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28 The ordinal signed order is available upon request (775) 687-9308

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing ORDER GRANTING MOTION TO DISMISS was duly mailed, postage prepaid, to
5 the following:

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An employee of the State Environmental Commission

DATED: June 10, 2010