

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR POLLUTION CONTROL
901 SOUTH STEWART ST., SUITE 4001
CARSON CITY, NEVADA 89701-5249

NO. 2165

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Edward S. Ringle, President

Company Name: El Sueno Resort and Casino

Address: P.O. Box 836
Beatty, NV 89003-0836

Permit Number: (new) AP1629-2531

FIN: (new) A0996

Site of Alleged Violation: Beatty, Nevada

Date of Observation: January 22, 2009 **Arrival:** 11:10 AM **Departure:** 1:35 PM

Ambient Temperature: 56 °F **Clear:** X **Cloudy:** X **Rain:** **Snow:**

Wind Speed: calm **Wind Direction:** north

It is alleged that the following regulation was violated by the person named in this notice:

NAC 445B.275 Violations: Acts constituting; notice. 1. Failure to comply with any requirement of NAC 445B.001 to 445B.3791, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(a) Failure to apply for and obtain an operating permit.

NAC 445B.22037 Emissions of particulate matter: Fugitive dust.

3. Except as otherwise provided in subsection 4, no person may disturb or cover 5 acres or more of land or its topsoil until he has obtained an operating permit for surface area disturbance to clear, excavate, or level the land or to deposit any foreign material to fill or cover the land.

It is alleged that the following act or practice constitutes the violation:

El Sueno Resort and Casino failed to obtain a Class II Air Quality Operating Permit for Surface Area Disturbance before commencing grading and excavation on property totaling five acres or more.

Evidence:

On January 12, 2009, Nye County officials found that El Sueno Resort and Casino had graded over five acres of property in Beatty, NV. Nye County discovered that a resort hotel was to be constructed over multiple parcels near MM 60, east of US Highway 95. Nye County contacted the Nevada Division of Environmental Protection-Bureau of Air Pollution Control (NDEP-BAPC) on January 14, 2009. The NDEP-BAPC confirmed that El Sueno Resort and Casino had not applied for and received a Class II Air Quality Operating Permit for Surface Area Disturbance (SAD Permit).

On January 14, 2009 the NDEP-BAPC informed Keith Kearns, an El Sueno representative, that all grading must cease and that an application for a SAD permit must be submitted to the NDEP-BAPC as soon as possible. On January 22, 2009 a NDEP-BAPC inspector visited the property and confirmed that the disturbance totaled well over five acres. El Sueno Resort and Casino (Mr. Kearns) agreed to submit a SAD permit application by January 30, 2009. The NDEP-BAPC issued SAD Permit AP1629-2531 on February 6, 2009 to cover 19 acres of disturbed area.

The NDEP-BAPC and Mr. Kearns met to discuss the alleged violation on March 4, 2009. This Notice of Alleged Air Quality Violation and Order (NOAV) is El Sueno Resort and Casino's first NOAV in the last 60 consecutive months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2165

ORDER

Under the authority of NRS 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

_____ To pay the following administrative fine in accordance with 445B.281.1: \$ _____

To take corrective action: Install a sign per NRS 445B.230.6 "Posting" that faces US Highway 95 within two weeks of receiving this NOAV.


To take corrective action: Install two "No Trespassing" signs within two weeks of receiving this NOAV.

To take corrective action: Operate in compliance with all terms and conditions of Permit AP1629-2531.

_____ To appear for a hearing before the Environmental Commission at:
Date: _____ Time: _____

_____ To appear for an enforcement conference at:
Date: _____ Time: _____

_____ This notice is a warning.

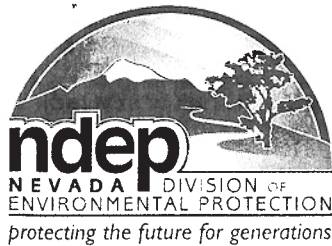
Signature 
Issued by: Lawrence Kennedy, P.E.
Supervisor
Compliance and Enforcement Branch

Phone: 775-687-9495 Date: March 17, 2009

LK/clc

Certified Mail No. 7007 2560 0000 5997 8353

This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the Environmental Commission of not more than \$10,000 per day of violation.



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Jim Gibbons, Governor

Allen Biaggi, Director

Leo M. Drozdoff, P.E., Administrator

March 17, 2009

Mr. Edward Ringle, Owner
El Sueno Resort and Casino
P.O. Box 836
Beatty, NV 89003

RE: NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2165
EL SUENO RESORT AND CASINO, BEATTY (FIN A0996)

Dear Mr. Ringle:

On January 22, 2009 a Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP-BAPC) inspector confirmed that more than five acres of the property planned for development of the El Sueno Resort and Casino (El Sueno) had been disturbed. On January 29, 2009 El Sueno submitted an application for a Class II Air Quality Operating Permit for Surface Area Disturbance (SAD Permit) to the NDEP-BAPC. On February 6, 2009 the NDEP-BAPC issued SAD Permit AP1629-2531 to cover 19 acres of surface area disturbance.

Paragraph 3 of NAC 445B.22037 **Emissions of particulate matter: Fugitive dust**, states that: "Except as otherwise provided in subsection 4, no person may disturb or cover 5 acres or more of land or its topsoil until he has obtained an operating permit for surface area disturbance to clear, excavate, or level the land or to deposit any foreign material to fill or cover the land." Hence, grading five acres or more without first applying for and receiving a SAD permit is a violation of NAC 445B.275 **Violations: Acts constituting; notice**. NAC 445B.275 states in part, "1. Failure to comply with any requirement of NAC 445B.001 to 445B.3791, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(a) Failure to apply for and obtain an operating permit.

On March 4, 2009 the NDEP-BAPC met with El Sueno representative Keith Kearns to discuss the alleged violation for operating without a permit. Based on the NDEP-BAPC inspector's findings and the results of our discussions on March 4, the NDEP-BAPC determined that issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2165 is warranted.

NOAV No. 2165 constitutes a major violation under NAC 445B.281 **Violations: Classification; administrative fines**. As we discussed during our conference, the NDEP-BAPC assesses penalties in settlement of major air quality violations on behalf of the Nevada State Environmental Commission (SEC). The Administrative Penalty Table, used by the NDEP-BAPC to establish penalties for non-emission violations, calls for a base penalty of \$1,450 for disturbing or commencing the disturbance of 19 acres without a SAD Permit.

During our conference on March 4, the NDEP-BAPC and Mr. Kearns also discussed how unauthorized use of the property by off-road vehicles and overnight parking of recreational



El Sueno Resort and Casino
March 17, 2009
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vehicles has caused problems related to fugitive dust. To help address this problem in the future, the NDEP-BAPC stated that it would consider recommending a lesser monetary penalty (\$500) should El Sueno commit to means of limiting property access. Mr. Kearns said that El Sueno would provide the NDEP-BAPC with plans for constructing some combination of fencing, gates or other barriers, and the estimated cost of such construction.

Please provide the NDEP-BAPC with information regarding the construction of access barriers by March 27, 2009 should you want it considered as part of the final settlement. In addition, please be aware that a sign that complies with the NDEP-BAPC's requirements for posting SAD Permits must be installed at or near the major access or frontage to the site.

Should you believe that NOAV No. 2165 is not warranted or that there are extenuating circumstances, an appeal may be requested pursuant to **NRS 445B.360** and to the SEC's administrative rules. A copy of SEC appeal form #3 is enclosed. Appeals must be received within 10 days of receipt of this notice, pursuant to NRS 445B.340. These appeals are processed through John Walker, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249, or by fax at 775-687-5856. Mr. Walker's phone number is 775-687-9308. Please provide me with a copy of any correspondence you may have with the SEC.

If you have any questions regarding this matter, please contact Caren Campbell at 702-486-2850, extension 241 or call me at 775-687-9495.

Sincerely,



Lawrence Kennedy, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

LK/clc

Enclosures: 1. Notice of Alleged Air Quality Violation No. 2165
2. Copy of SAD sign posting requirement
3. SEC Appeal Form #3

cc (w/enc. 1): John Walker, SEC
Nye County Board of Commissioners

Route To: Leo Drozdoff, NDEP
Colleen Cripps, NDEP
Greg Remer, NDEP
Francisco Vega, NDEP

Certified Mail No. 7007 2560 0000 5997 8353