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## Notice Of Appeal Hearing

**Date:** January 16, 2007

**To:** Don W. Tibbals - Appellant, Gopher Construction  
Mike Elges - Nevada Division of Environmental Protection  
Larry Kennedy - Nevada Division of Environmental Protection  
Jason Dunphy - Nevada Division of Environmental Protection  
William Frey - Deputy Attorney General (NDEP)  
David Newton - Deputy Attorney General (SEC)

Ira Rackley - SEC Commissioner (Panel Chair)  
Lew Dodgion - SEC Commissioner  
Pete Anderson - SEC Commissioner

**Subject:** Gopher Construction Appeal of NOAVs 2057 and 2058.  
Gopher Construction Appeal of NOAVs 1992, 1993, 1994, 1995.

A three-member panel of the State Environmental Commission (SEC) has scheduled a hearing on two appeals filed with the SEC by Don W. Tibbals of Gopher Construction, Fernley Nevada.

**A hearing to consider these appeals will be held at 1:00 pm on February 15, 2007 in Carson City Nevada.** The hearing will be held at the Office of the Attorney General, 100 North Carson Street, Carson City, Nevada - second floor conference room.

**The panel of the SEC will consider the following matters as documented by the Nevada Division of Environmental Protection:**

**Appeal Number 1:** In June 2005 on two occasions a Nevada Division of Environmental Protection inspector observed large quantities of fugitive dust and fugitive emissions emanating from Gopher Construction's sand and aggregate plant located at the Black Mountain Industrial Minerals pit east of Fernley, Nevada.

NDEP has alleged that Gopher Construction failed to control dust emanating from the work site and failed to report excess emissions from the plant on two occasions in June 2005. NDEP has further alleged that Gopher Construction was operating 5 units without the required emissions controls and that Gopher Construction failed to conduct the Initial Opacity Compliance Demonstration as required by an air quality operating

permit #AP 1442-0807.01. Accordingly, NDEP issued Gopher Construction **Notice of Alleged Violations (NOAV)** Nos. 1992, 1993, 1994 and 1995.

**Additional Background about the NOAVs:** NOAV 1992 alleges that Gopher Construction is in violation of Nevada Administrative Code (NAC) 445B.22037 Emissions of particulate matter: **Fugitive dust**. NAC 445B.22037 states, in part, that: "1. No person may cause or permit the handling, storing, or transporting of any material in a manner which allows or may allow controllable particulate matter to become airborne..."

NOAV Nos. 1993, 1994 and 1995 allege that Gopher Construction is in violation of NAC 445B.275 Violations: **Acts constituting; notice**. NAC 445B.275 states, in part, that: "1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, sections 2 to 42, inclusive, of the CAMR regulation, any applicable requirement or any condition of an operation constitutes a violation. As required by NRS 445B.450, the director shall issue a written notice of violation to any owner or operator for any violation, including, but not limited to: ...

- (c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit; ...
- (e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit; ..."

**Appeal Number 2:** In August 2006 an NDEP inspector from the Bureau of Air Pollution Control conducted an inspection of Gopher's crushing and screening plant located at 245 Mull Lane, Fernley, NV. During the inspection five pieces of "unpermitted" equipment were documented operating onsite. The unpermitted equipment was generating large quantities of fugitive dust. Gopher had built and operated unpermitted equipment at the Mull Lane facility and had subsequently failed to control emissions and fugitive dust generated from the unpermitted equipment.

**Additional Background:** NOAV No. 2057 alleges that Gopher Construction is in violation of NAC 445B.275 Violations: **Acts constituting; notice**. NAC 445B.275 states, in part, that: "1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, sections 2 to 42, inclusive, of the CAMR regulation, any applicable requirement or any condition of an operation constitutes a violation. As required by NRS 445B.450, the director shall issue a written notice of violation to any owner or operator for any violation, including, but not limited to: ...

- (d) Commencing construction or modification of a stationary source without applying for and receiving an operating permit or a modification of an operating permit as required by NAC 445B.001 to 445B.3497, inclusive, or a mercury operating permit to construct as required by NAC 445B.3611 to 445B.3689; ..."

Notice of Alleged Air Quality Violation and Order (NOAV) No. 2058 alleges that Gopher Construction is in violation of Nevada Administrative Code (NAC) 445B.22037 Emissions of particulate matter: **Fugitive dust**. NAC 445B.22037 states, in part, that: "1. No person may cause or permit the handling, storing, or transporting of any material in a manner which allows or may allow controllable particulate matter to become airborne; ..."

**Legal Authorities:** The above referenced hearing will be held in accordance with NRS 233B.121 to 150 inclusive and NRS 445B.100 to NRS 445B.845 and Nevada Administrative Code (NAC) 445B.875 to 445B.899.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the SEC Executive Secretary in writing at the following address:

Nevada State Environmental Commission  
901 South Stewart St. Ste. 401  
Carson City, Nevada, 89701-5249;

Notification can be made by facsimile to (775) 687-5856; or by calling (775) 687-9308 no later than 5:00 p.m., on February 6, 2007. This notice is issued pursuant to Nevada Revised Statutes (NRS) Chapter 233B and NRS 445B.350.

For everyone's convenience the SEC Rules of Practice (NAC 445B.875), which address procedures involving contested cases are attached. The online version is located at:

<http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>

Sincerely;

John B. Walker  
Executive Secretary

Enclosure:

JBW/jbw

cc: Alan Coyner, SEC Vice-Chairman  
Leo Drozdoff - NDEP Administrator  
Colleen Cripps, NDEP Deputy Administrator  
Robert Pearson, SEC Recording Secretary