Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of December 3, 2014 9:00 AM

Bryan Building Carson City
901 South Stewart Street
Carson City, NV

Members Present:
E. Jim Gans, Chairman
Tom Porta, Vice Chairman
Mark Turner
Cary Richardson
Jason King
Kathryn Landreth
Dave Prather, Acting State Forrester

Members Absent:
Rich Perry
Jim Barbee
Tony Wasley

SEC Staff Present:
Henna Rasul, SEC/DAG
Valerie King, Executive Secretary
Misti Gower, Recording Secretary

Members of the Public Present:
Pat Lorello, Robinson Mine
Ron Bell, Bango Refining
Mike Baughman, Humboldt River Basin Water Authority
Bart Hiatt, A&K Earth Movers
Gary Fowkes, A&K Earth Movers
Stephanie Wilson, US EPA

BEGIN SUMMARY MINUTES

1) Call to order, Roll Call, Establish Quorum: (Discussion) The meeting was called to order at 10:00 am by Chairman Jim Gans. Ms. King, the Executive Secretary, confirmed the hearing was properly noticed and that a quorum was present.

2) Public Comments: (Discussion) Chairman Gans called for public comment. There was none.

3) Approval of Agenda: (Action Item) Chairman Gans asked if there were any changes or comments regarding the agenda. Ms. King stated that item 8, temporary regulation P2014-11, had been removed from the agenda by NDEP. She indicated it was anticipated to be before the SEC in a future meeting.

Commissioner Turner moved to approve the agenda as changed and Commissioner Landreth seconded. The agenda was unanimously approved.

4) Approval of the minutes for the October 8, 2014 SEC meetings: (Action Item) Chairman Gans requested comments from the Commission on the October meeting minutes. Hearing none, he asked for a motion.

Commissioner King moved to approve the minutes as presented and Vice Chairman Porta seconded. The motion passed unanimously.

5) Penalty Assessments for Air Quality Violations: (Action Item) Mr. Rob Bamford, Bureau Chief of Air Pollution, and Mr. Francisco Vega, supervisor of the Compliance and Enforcement Branch, presented the violations to the Commission. The handouts provided during the meeting are included as attachments to the meeting minutes.

A. A&K Earth Movers, Inc. — NOAV No. 2512, alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit. The recommended penalty amount is $24,840.00.

B. Bango Refining NV, LLC. – NOAV Nos. 2516 through 2521 for alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit and also failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit. The total recommended penalty amount is $31,800.00.

C. Robinson Nevada Mining Company — NOAV Nos. 2498 through 2506 for alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit and also failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit. The recommended penalty amount is $55,100.00.

A&K Earth Movers, Inc.: Mr. Bamford informed the Commission that A&K Earth Movers operates a hot mix asphalt plant in Churchill County under a Class II Air Quality Operating permit. During a scheduled stack test in August 2014, a BAPC inspector observed excessive fugitive emissions from material transfer equipment which was comprised of three separate permitted emission points. One point was missing a permit required sprayer and two points had required sprayers present, but neither was operative.

The proposed penalty amount of $24,840.00 is based on the number of systems in violation, the time basis in which the violation occurred and the history of non-compliance (Attachment 1). Mr. Bamford added that on October 29, 2014, A&K provided an affidavit testimony from one of its operators that quantified the use and dates of the missing sprayers. A&K proposed a smaller time multiplier which would yield a lower penalty amount. Because the information was brought forward after the enforcement conference and the issuance of the NOAV, BAPC did not re-consider the proposed penalty amount. Procedurally it was too late to change the NOAV. The company was disputing the number of times the equipment was used without the sprayer in comparison to the length of time the sprayer was down. A&K was informed that this proceeding would provide an opportunity to present its information (Attachment 2). The Commission decided to hear from A&K before Mr. Vega explained the penalty matrix.

Bart Hiatt, President of A&K and Gary Fowker, Crushing Material Manager, came forward to address the Commission. Mr. Hiatt explained that he did an investigation to identify and correct the problems and compiled the information presented to the Commission. He stated they now

have a procedure in place and are in compliance. Mr. Hiatt stated that after interviewing the employees, he was able to determine how many times the crusher had run. Based on that information, he was able to recalculate the penalty to a lower amount. Mr. Hiatt stated he was asking the Commission to reduce the fine to the amount he had recalculated. A&K was fined for being without the sprayer for eight weeks, but after his investigation, he was able to determine the crusher had only operated six days of the eight week period without the sprayer; therefore A&K proposed that the out of compliance time multiplier was one week.

Mr. Vega then presented to the Commission the calculation associated with the original penalty recommendation. He then offered a revised calculation penalty matrix based upon A&K's new information (Attachment 3). Mr. Vega stated A&K had four violations within the past three years. One was similar to the existing violation and the other three were different. The revised calculation penalty was $16,740.00 based on five days of violation.

Commissioner King questioned the minimal difference in the fine amounts based on going from eight weeks to five days. He expressed concern that the possibility exists, in the penalty matrix's current framework, that a lower penalty could be assessed for a longer period of violation depending on whether the day or week multiplier is applied.

Mr. Bamford stated that because the company knew the NDEP inspector would be there, the obvious violations observed and this being their fifth violation, that a time multiplier of one week for five days of violations seemed inadequate. This was also based on how BAPC has historically determined similar violations. Mr. Vega added that historically anything less than seven days is calculated by days not weeks. Commissioner King asked NDEP if the new information provided by A&K had been presented during the enforcement conference, would NDEP be presenting the revised penalty today. Mr. Vega stated that would be correct.

Vice-Chairman Porta asked what the basis was for applying five days of violation to the multiplier when Mr. Hiatt testified his company was in violation for six days. Mr. Vega stated it was based on operational records and the information Mr. Hiatt provided.

After further discussion, the Commission expressed the importance of applying penalties fairly and consistently.

Motion: Vice Chairman Porta moved to accept NDEP's revised recommended penalty of $16,740.00 for Air Quality Violation No. 2512. Commissioner Turner seconded the motion and it passed unanimously.

Bango Refining NV, LLC: Mr. Bamford stated that Bango Refining NV (Bango) operates a recycled oil-refining facility in Churchill County under a Class 2 Air Quality Operating Permit. During an inspection of the Bango facility it was discovered that four permitted systems had exceeded their permit operating limitations. During the enforcement conference, Bango provided additional information which reduced the number of violations. After reviewing the information provided, BAPC recalculated the penalty amount based on the time the violations occurred, number of emission units involved and no previous violations within the last 60 months.

Mr. Vega then presented the penalty matrix calculation (Attachment 4).Vice Chairman Porta questioned the penalty multiplier for NOAV 2518. Mr. Vega stated that historically, less than seven days of violation uses a multiplier of "days" for the penalty calculation. Violations occurring for more than seven days will have a multiplier using "weeks" for the penalty calculations. The Commissioners expressed concern regarding the application of the penalty matrix. A company could be out of compliance for weeks and pay less than if they had been out of compliance for a few days. Mr. Vega stated this was a consistent fine for the level of permit.

Vice Chairman Porta stated he typically sees a consistency of days or weeks for a facility, not a mix. He stated he would like to see BAPC use a consistent multiplier, days or week, per facility.

Ron Bell facility manager for Bango Refining came forward to address the Commission. Mr. Bell stated he was not disputing the penalty. He indicated the violations were a result of people not paying attention. He stated that since the NOAVs were issued, Bango had made changes to ensure compliance.

Motion: Commissioner Landreth moved to approve the recommended penalty of $31,800.00 for Air Quality Violations No. 2516 through 2521. Commissioner Richardson seconded the motion and it passed unanimously.

Robinson Nevada Mining Company: Mr. Bamford explained that Robinson operates a copper mine in White Pine County under a Class 2 Air Quality Operating Permit. In June 2013, a compliance inspection was conducted by BAPC. During the inspection, seven violations were discovered. In June 2014, BAPC held an enforcement conference with Robinson. During the enforcement conference, Robinson was able to provide additional information. After reviewing the information provided, BAPC based the penalty amount on the time the violations occurred, number of emission units involved and the fact no previous violations had occurred within the last 60 months. Due to the high count of violations and systems, BAPC used discretion and applied the lowest multipliers to prevent an astronomic penalty amount.

After Mr. Bamford had explained each violation, Chairman Gans questioned the penalty amount being that there were so many violations. Mr. Bamford explained that if BAPC had used the high end of the penalty matrix, the fine would be $297,650.00. The lower end would be $129,450.00. Mr. Bamford indicated BAPC felt that the penalty of $129,450.00 for a minor source permit was not typical of what BAPC has done historically.

Mr. Vega then explained how BAPC used the multiplier to come up with the recommended penalty amount of $55,100.00 (Attachment 5).

Chairman Gans expressed surprise that Robinson had not had a violation in over five years and then suddenly had so many. He asked if anyone from Robinson wanted to come forward. Mr. Pat Lorello, Environmental Manager for Robinson Mining Company (RMC), approached the Commission. Mr. Lorello stated he was not there to contest the penalty but to acknowledge the cooperative process they have had with BAPC. He stated RMC responded to the inspection results by taking several actions, including completing the stack test, improving record keeping and reporting, plus many more to ensure all issues are fully addressed. Mr. Lorello explained there have been a lot of changes with the environmental staff resulting in a greater focus on air quality.

Motion: Commissioner King made a motion to accept the recommended penalty of $55,100.00 for Air Quality Violation No. 2498 through 2506. Commissioner Turner seconded the motion and it passed unanimously.

6) R103-14 Bureau of Water Quality Planning – South Fork Humboldt River and South Fork Reservoir Water Quality Standards Revision: (Action Item) Mr. Randy Pahl, Special Projects Coordinator, presented the proposed regulation amendments to the Commission using a handout (Attachment 6). Mr. Pahl stated the revision will separate the South Fork Reservoir from the South Fork Humboldt River and establish appropriate beneficial uses and water quality criteria. He stated that workshops had been held as well as an open comment period. He stated that no

comments had been received and therefore, no changes were made to the proposed regulation amendments.

Mr. Pahl stated the Nevada Administrative Code (NAC) for the South Fork Humboldt River was created in 1970 with no recognition of the South Fork Reservoir, as it was constructed in 1988/89. Currently the reservoir is protected under the South Fork Humboldt River standards, including beneficial uses and water quality criteria. Physical and hydrologic characteristics of a reservoir differ from a river; therefore, different water quality criteria are needed. The revision spells out beneficial uses for the South Fork Reservoir. Water quality criteria are proposed that will protect the beneficial uses of the reservoir based upon USEPA guidance and NDEP research and determinations.

Chairman Gans asked if there was anyone from the public who wanted to comment. Mr. Mike Baughman, Executive Director with the Humboldt River Basin Water Authority (HRBWA), approached the Commission. Mr. Baughman explained the HRBWA has concerns regarding three of the beneficial uses proposed for the reservoir. The uses are irrigation, municipal and industrial. He stated that these uses do not apply to the reservoir and are unlikely to ever apply. He stated that the South Fork Reservoir is part of the State Park system, intended for recreational use only. The HRBWA sees no reason to list uses that do not exist. Mr. Baughman stated that the implication of applying these uses could be the water body being listed as impaired, specifically because of the municipal use. Mr. Baughman communicated that HRBWA did not participate in the public hearings when the draft was proposed. He requested, on behalf of the HRBWA, that the Commission either adopt the regulation without the three stipulated beneficial uses or else delay the adoption of the regulation.

Mr. Pahl explained NDEP's position regarding why the uses Mr. Baughman is concerned about are being applied. The criteria are in place to protect the downstream water quality as well. Commissioner Richardson asked if anything being brought up by HRBWA would give NDEP pause about what it is proposing. Deputy Administrator Dave Gaskin stated it would not.

Motion: Vice Chairman Porta moved to adopt regulation R103-14. Commissioner Landreth seconded the motion and it passed unanimously.

7) R118-14 Bureau of Safe Drinking Water – Public Water Systems Regulation Amendment: (Action Item) Ms. Andrea Seifert, Public Water System Compliance Branch supervisor, presented the proposed regulation amendments to the Commission using a handout (Attachment 7). Ms. Seifert explained the amendments update the Nevada Safe Drinking Water's (SDW) "adoption by reference," adding a new federal regulation associated with the Total Coliform Rule that was promulgated between July 1, 2006 and July 1, 2014. The amendments also include the federal change to the definition of "Lead Free." Lastly, the amendments contain general housekeeping improvements.

Ms. Seifert stated that the amendment will allow NDEP to continue to seek and obtain Primary Enforcement Responsibility, or, "Primacy" approval by the USEPA for the Safe Drinking Water Program (SDWP). She stated that the SDWP regulates public drinking water systems using a combination of State regulations and Federal regulations. The water systems are required to comply with federal regulatory requirements, regardless of whether or not Nevada adopts the federal programs. In 1978, Nevada was granted primary enforcement responsibility. In order to retain primacy for federal drinking water programs, NDEP submits "Primacy Package" revision applications for USEPA approval for each new drinking water regulation promulgated by the federal government. The Primacy packages must prove to the USEPA that the state regulations are as stringent as the federal regulations.

Ms. Seifert stated that public workshops were held to inform and involve the regulated community of the proposed regulations. She stated that numerous outreach opportunities were utilized. NDEP solicited input from technical assistance providers and public water systems regarding tools being developed for implementation of the Revised Total Coliform Rule and the Lead Free Amendments. A few comments were received which resulted in the December 2, 2014 "green-line" amendments provided as a handout to the Commission (Attachment 8). She stated that overall, the comments received were positive and a letter of support had been received as well.

Ms. Seifert and Ms. Jennifer Carr, Bureau Chief of Safe Drinking Water, explained each of the proposed amendments and answered the questions asked by the Commissioners.

Motion: Commissioner King moved to adopt regulation R118-14, including the December 2, 2014 amendment. Commissioner Richardson seconded the motion and it passed unanimously.

8) Temporary Regulation R2014-14 - Bureau of Safe Drinking Water, Subdivision Process Amendment: (Action Item) This item was pulled from the agenda.

9) Arsenic Rule Extensions – Bureau of Safe Drinking Water: (Discussion) Ms. Jennifer Carr, Chief for the Bureau of Safe Drinking Water, provided an update on the compliance status of the public water systems that have received Exemptions and subsequent Extensions by the SEC over the past eight years to comply with the federal Arsenic Rule.

Ms. Carr stated that the revised arsenic standard of 10 parts per billion (ppb) was enacted on January 22, 2001 and became enforceable five years later on January 23, 2006. When the new drinking water standard became enforceable, it affected 105 out of 326 water systems in Nevada. In 2006 and 2007 the SEC granted exemptions to 64 qualifying water systems, providing them three additional years to comply. A number of systems received a two year extension in 2008, 2010, and 2012. These water systems had a total of 14 years to comply. She stated that, of the ten water systems issued exemptions by the SEC, seven have achieved compliance since the 2012 SEC hearing. The remaining three public water systems which remain noncompliant are McDermitt, Lander County District 2 in Austin and Silver Knolls Mutual Water Company.

Ms. Carr explained that McDermitt had completed drilling and construction of its new well in November but was waiting on sampling results for arsenic. If the sample results are positive, McDermitt will be in compliance, using the new well as its primary drinking water source. If the sample results are above 10 ppb, McDermitt will have to take more time to design and install an arsenic treatment plant, resulting in an Administrative Order to be issued on January 24, 2015. McDermitt will be required to Show Cause why NDEP should not pursue action in District Court. This process would include an evaluation by an internal Penalty Panel consisting of NDEP Bureau Chiefs who will determine if a penalty is warranted.

Ms. Carr stated that Lander County District 2 has its "New Reese River Valley" well online. Safe Drinking Water staff will conduct a sanitary survey inspection. She stated that the initial arsenic sampling results are 5ppb and that NDEP staff is working through a final review of documents to determine official compliance.

Ms. Carr stated that concerns expressed by the Commission two years ago regarding Silver Knolls, have come to fruition. Silver Knolls has an engineering firm; however, the schedule it implemented two years ago was aggressive and left little room for complications. The water system is overseen by Washoe County Health District, which is NDEP's partner for implementation of the program in that county. Ms. Carr went through a list of issues with Silver Knolls and stated that an inspection had been conducted on December 2, 2014. She stated that NDEP expects violations for quarterly reporting and compliance issues. Silver Knolls will receive an

Administrative Order on January 24, 2015 and will be required to Show Cause why NDEP should not pursue action in District Court. The process will include an evaluation by a NDEP internal Penalty Panel consisting of Bureau Chiefs.

10) Administrator's Briefing to the Commission: (Discussion) Mr. David Gaskin, NDEP Deputy Administrator, provided the briefing to the Commission. Mr. Gaskin thanked the Commissioners for their time and attention they give to the many issues brought before them.

Mr. Gaskin informed the Commission that NDEP submitted comments to the USEPA and the Amy Corp of Engineers regarded the proposed change of the federal regulation that redefines "Waters of the US." Mr. Gaskin explained NDEP's comments submitted in the letter, which he stated had been signed by the Department of Conservation and Natural Resources Director and the Department of Agriculture Director and the Colorado River Commission of Nevada Executive Director (Attachment 9).

Vice Chairman Porta shared that Nevada has good ground water and surface water protection rules, while many other states do not. He stated that Nevada is not in the majority when it comes to opposing the USEPA's proposed regulation.

Mr. Gaskin stated that NDEP also submitted comments on One-Eleven D, a proposed USEPA regulation to reduce greenhouse gas emission from power plants. The comments were submitted jointly with the Public Utilities Commission and the Governor's Office of Energy. He stated that this is on ongoing issue and that NDEP will keep the Commission updated as things progress.

Mr. Gaskin moved on to the upcoming Legislative session. He stated that there is some Bill Draft Requests (BDR) that could affect NDEP. He explained that the BDRs contain only brief descriptions at this point and that NDEP will be watching to see how they evolve and will keep the Commission updated.

Mr. Gaskin thanked Ms. King for her work on the SEC Information Packet that will be distributed to the Commissioners. He stated that the packet will be a good resource for them.

12) Public Comment: (Discussion) Chairman Gans asked for public comments. Hearing none, he asked when the next SEC meeting will be held. Ms. King stated the next meeting will be held February 11, 2015 in the Tahoe Conference Room on the 2nd floor of the Bryan Building.

13) Adjournment: (Discussion) Meeting was adjourned at 2:20pm.

DRAFT

ATTACHMENTS

ATTACHMENT 1: A&K Earth Movers Penalty Information

ATTACHMENT 2: A&K Earth Movers Handout to Commissioners

ATTACHMENT 3: A&K Earth Movers Revised Penalty Matrix

ATTACHMENT 4: Bango Refining NV Penalty Information

ATTACHMENT 5: Robinson Nevada Mining Penalty Information

ATTACHMENT 6: R103-14 Presentation Handout

ATTACHMENT 7: R118-14 Presentation Handout

ATTACHMENT 8: "Green-lined" Amendment

ATTACHMENT 9: Letter submitted to EPA from NDEP

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ATTACHMENT 1

A&K Earth Movers Penalty Information

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1. A&K Earth Movers, Inc., Churchill County

NOAV #2512 with proposed penalty of $24,840.

A&K Earth Movers (A&K) operates a hot mix asphalt plant in Churchill County under the requirements of Class 2 permit #AP1442-3321. The permit was issued on April 17, 2013.

On August 8, 2014, the BAPC was onsite at A&K observing a compliance source test when it noticed excessive fugitive emissions from two material transfer systems. One system did not have the permit-required fogging water spray installed at unit PF1.054, and the other system did not have permit-required fogging water sprays operational at units PF1.053 and PF1.055. PF1.053 did not have a water supply turned on, and PF1.055 had a section of water line disconnected. After the BAPC inspector brought these to the attention of A&K, it installed a sprayer at PF1.054 and repaired the water supply to PF1.053 and PF1.055, bringing the three control systems online during the inspection.

On September 9, 2014, an enforcement conference was held with A&K to review the findings and to determine if there were extenuating facts. During the enforcement conference the BAPC asked if there was evidence such as receipts, photos or other documentation that A&K could provide to demonstrate that the required fogging sprayer was installed on PF1.054, and what the installation date was. The representatives of A&K stated that they did not have any such evidence. This meant that the BAPC had to assume that the sprayer had not been installed since the start of operation. The BAPC reviewed the penalty matrix with A&K and provided the recommended penalty amount of **$24,840** based on the number of systems in violation, the time basis in which the violation occurred in and the history of non-compliance. This is A&K's fifth violation in 60 months. NOAV #2512 was issued on September 18, 2014.

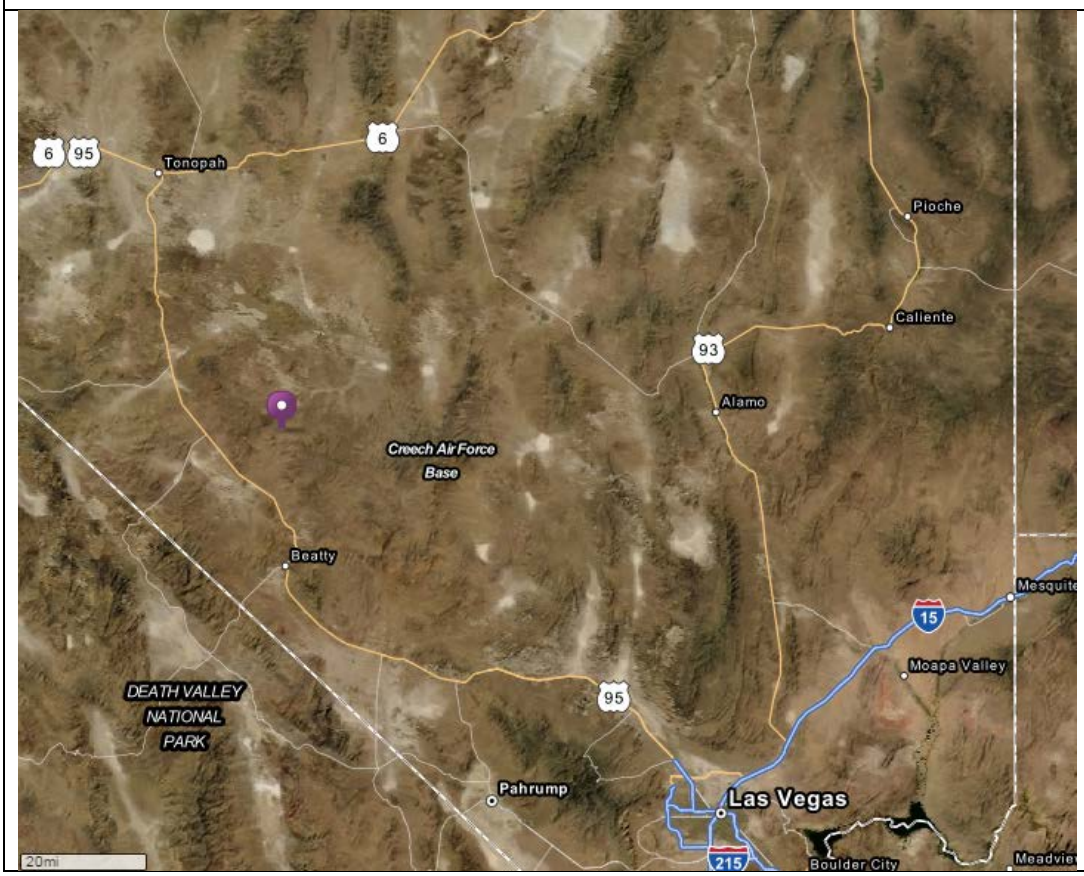
On October 3, 2014, A&K filed an appeal of NOAV #2512, over concern of the (large) time multiplier used to calculate the proposed penalty for unit PF1.054. After it was explained to A&K that the penalty amount was not an appealable action until the SEC hearing on our penalty recommendation, the appeal was withdrawn. The company did not contest that the sprayers were not installed/operated in accordance with the permit during the time of the inspection.

On October 29, 2014 (41 days after issuance of the NOAV and 50 days after the enforcement conference), A&K provided new evidence regarding the installation of the fogging sprayer at PF1.054 in the form of an affidavit. In the affidavit, an A&K operator testifies under perjury of law that the fogging sprayer on PF1.054 was installed and in operation between the dates of June 4th through July 8th and July 28th through August 7th. This affidavit and its supporting documentation is included in this packet. The BAPC told A&K that it would have an opportunity to present the evidence to the SEC, if A&K would like to do so, and that this was the appropriate venue to discuss the penalty amount. With its affidavit submittal A&K proposed a time multiplier of "1" instead of the BAPC's "8", substantially reducing the proposed penalty amount from $24,480 to $2,700. This will be reviewed in detail during BAPC's penalty matrix presentation.

The pollutant of concern is particulate matter (**PM**). Operating the fogging sprayers as permitted is essential to comply with State and Federal Air Quality Standards. Failing to install and/or operate these required air pollution controls removes the affirmation that the equipment is operating in a manner that is protective of public health and the environment.

1. A&K Earth Movers, Inc.

Great Basin Parkway, Hazen, NV
Churchill County, NV (37.31, -116.78)



System PF1.053, no sprayer in operation. PF1.054 no sprayer installed. Hose for PF1.055 buried in dust and not connected to water supply.	System PF1.053, no sprayer in operation. PF 1.054 no sprayer installed. A&K employee in orange connecting PF 1.055 water sprayer to water supply.

Water supply hose to PF1.055's fogging sprayer was not attached while the equipment was operating. Wet spot left of the hose created after turning on PF 1.053. PF 1.054 no water sprayer installed	The top photo is PF 1.054 water sprayer installed 4 hours after arriving on site. Bottom photo is PF 1.055 sprayer hose re-attached during inspection

Fugitive dust accumulation on State vehicle during inspection (1-hour).	Sprayer PF1.055 installed, but without water turned on while operating.

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: A & K Earth Movers FIN A0637
Violation: Failure to install air pollution control equipment (PF1.054)
NOAV: 2512

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = __$1,000__

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$1,000	X	8	=	**$8,000**
Dollar Amount		Number of **Weeks**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) ____150____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 4 X 5 = ____20____

Total Penalty Adjustment Factors **- Sum of A & B:** ____**170**____ %

IV. Total Penalty

$8,000	X	170%	=	$13,600
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
$8,000	+	$13,600	=	**$21,600**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: A & K Earth Movers FIN A0637
Violation: Failure to maintain air pollution control equipment (PF1.53 and PF1.055)
NOAV: 2512

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = __$600 ____

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	2	=	**$1,200**
Dollar Amount		Number of **Units**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) ____150____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 4 X 5 = ____20____

Total Penalty Adjustment Factors **- Sum of A & B:** ____**170**____ %

IV. Total Penalty

$1,200	X	170%	=	$2,040
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
$1,200	+	$2,040	=	**$3,240**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

ATTACHMENT 2:

A&K Earth Movers Handout to Commissioners

ENGINEERING
A & K EARTH MOVERS, INC.
12251 TRUCKEE CANYON COURT
SPARKS, NEVADA 89434
(775) 825-1636 • FAX (775) 825-6171

GENERAL ENGINEERING
EARTH MOVERS
Visit us at:
www.akearthmovers.com

MAIN OFFICE
A & K EARTH MOVERS, INC.
515 WINDMILL DRIVE • P.O. BOX 1059
FALLON, NEVADA 89407
(775) 423-6085 • FAX (775) 423-8410

October 29th 2014

Mr. Rob Bamford
Bureau Chief
Nevada, Department of Environmental Protection
901 S. Stewart Street Suite 4001
Carson City, Nevada 89701

RE: Notice of Alleged Air Quality Violation and Order No. 2512

Mr. Rob Bamford,

A&K Earth Movers understands and recognizes the severity of the violation and concurs that the violation occurred. However I am requesting that the fine identified as pollution control equipment (PF1.054) be recalculated based on the findings and information I am providing.

1. I have attached (1) a sworn declaration from Billy Davis that indicates PF1.054 was in place and operating from the date of the Hot Plants start up on June 4th 2014 through July 8th 2014. He also states that he left the project on July 15th – 17th 2014 to attend an MSHA training session in Carson City (1-A&B). He further states that he returned to the Hot plant and was there during the production on July 28th, August 1st, August 6th, and August 7th 2014 (1-C,D,E, and F) the day of the inspection by NDEP (The date on NDEP's report stating the inspection was the 8th of August is incorrect). My contention is that the fine calculation on PF1.054 should have been 1 week and not 8 weeks.
2. Furthermore I have attached the production report (2) from the Hot Plants startup of June 4th 2014 to the date of the inspection August 7th 2014 indicating the plant ran for a total of 25 days or approximately 4 weeks not 8 weeks.

I have attached NDEP's calculation (3) on PF1.054 and have highlighted it to show our proposed fine reduction for that fogger using the evidence I have provided. I would like to mention that during our initial conference on September 9th 2014 with Francisco and Scott we weren't prepared to address the fine or its calculation as we had not had an opportunity to review it prior to the conference. It took the ride back to Fallon before we fully digested its impact. I appreciate the time we have been given to prepare our information and would appreciate consideration.

I would like to add that A&K takes compliance very seriously and we understand that penalties and fines are needed to help insure compliance. It has been a big challenge getting new employees back up to speed as the recession has taken a big bite out of the construction industries work force. I have imposed (4) strict procedures and checklists that must be followed

and completed each day of operations at every current location to ensure compliance. In the future we will know immediately if we have a pollution control device inoperable.

If you need further clarification or additional information please don't hesitate to contact me.

Sincerely,

K. Bart Hiatt
President
A&K Earth Movers Inc.
515 Windmill Drive
Fallon, Nevada 89407
Tele 775-423-6085
Mobile 775-221-1600

CC; US Postal Service

'1'

DECLARATION OF BILLY JOE DAVIS, JR.

STATE OF NEVADA)
) ss:
COUNTY OF CHURCHILL)

I **Billy Joe Davis, Jr.** hereby declare under the penalties of perjury of the laws of the state of Nevada that the following assertions are true.

1. I reside at 12251 Pioneer Way in Fallon, Nevada, 89406 and am employed by A&K Earth Movers Inc. I work in their Aggregate and Hot Plant department.

2. From June 4th 2014 to the present time, I have been working at A&K's Hazen Hot Plant as the ground man responsible for oil deliveries, checking and greasing all moving machine parts during the plants daily operation. I am also responsible for maintaining the water pollution system at the Hot Plant. During the time period from June 4th through July 8th all foggers required per the Operating permit were installed, maintained and in operation including Fogger PF1.054.

3. On July 15, 16, and 17th, I had to attend MSHA training in Carson City and was not at the Hazen Hot Plant. I returned to the Hazen Hot Plant on July 28th2014 and continued to work at that location through September of 2014. On August 7th we had an inspection at the Hot Plant by NDEP and I was asked to turn up fogger PF1.053 and then reconnect PF1.055. I was directed to install PF1.054 which I did immediately. Those foggers were all in place and working properly when I left to go to my MSHA class on July 15, 2014. I do not know what happened to the hose on PF1.054.

DATED: October 28, 2014.

Billy Joe Davis, Jr.

STATE OF NEVADA)
) ss:
COUNTY OF CHURCHILL)

SUBSCRIBED and SWORN to before me
this 28TH day of OCTOBER, 2014
by *** ***.

Vickie Jean Hanrahan
Notary Public

VICKIE JEAN HANRAHAN
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 98-4421-4 - Expires August 5, 2018

4853-1335-8880.1

'1-A'

Jack Hisey

From:	Jack Hisey
Sent:	Monday, July 21, 2014 4:06 PM
To:	Juli Fisk
Subject:	MSHA Training

Juli,
Please pay the following three employees 24 hours each for attending the MSHA 24 Hour New Miner training last week on July 15, 16 & 17.
They attended 8 hours each day for a total of 24 hours.

#11413 - Sergio Saenz
#11408 - Billy Davis
#11434 - Richard Whempner

If you have any questions, please contact me.

Thank you,
Jack Hisey
Safety/Risk Manager
A&K Earth Movers, Inc.
Office: 775.997.7243
Cell: 775.221.1665
jhisey@akearthmovers.com

www.akearthmovers.com
www.facebook.com/AKEarthMovers

A&K EARTH MOVERS
Since 1957

1-B

Certificate of Training

U.S. Department of Labor
Mine Safety and Health Administration

Approved OMB Number 1219-0009, Expires July 31, 2014.

This certificate is required under Public Law 91-173 as amended by Public Law 95-164. Failure to comply may result in penalties and other sanctions as provided by sections 108 and 110, Public Law 91-173 as amended by Public Law 95-164.

➡ Issue Certificate Immediately Upon Completion of Training

Serial Number (for operator's use): 11408

1. Print Full Name of Person Trained (first, middle, last)

Billy Joe Davis

2. Check Type of Approved Training Received:

- [ ] Annual Refresher
- [ ] Experienced Miner
- [ ] Hazard Training
- [ ] New Task (specify below)
- [x] Newly Employed, Inexperienced Miner
- [ ] Other (specify)

Date	Task	Initials (Instr / Studt)	Date	Task	Initials (Instr / Studt)

3. Check Type of Operation and Related Industry:

A. [x] Surface [ ] Construction [ ] Underground [ ] Shaft & Slope

B. [ ] Coal [x] Metal [x] Nonmetal

4. Date Training Requirements Completed

7-17-14 24hrs

[ ] Check if not completed and go to item 5, below.

➡ If completed, go to item 6, below.

5. Check Subjects Completed (use only for partially completed training):

- [ ] Introduction to Work Environment
- [ ] Hazard Recognition
- [ ] Emergency Medical Procedures
- [ ] H&S Aspects of Tasks Assigned
- [ ] Statutory Rights of Miners
- [ ] Self-Rescue & Respiratory Devices
- [ ] Transport & Communication Systems
- [ ] Roof/Ground Control & Ventilation
- [ ] Mine Map; Escapeways; Emergency Evacuation; Barricading
- [ ] Cleanup; Rock Dusting
- [ ] Mandatory Health & Safety Standards
- [ ] Authority & Responsibility of Supervisors & Miners' Representatives
- [ ] Health
- [ ] Electrical Hazards
- [ ] First Aid
- [ ] Mine Gases
- [ ] Explosives
- [ ] Prevention of Accidents
- [ ] Other (specify)

6. **False certification is punishable under section 110 (a) and (f) of the Federal Mine Safety & Health Act (P. L. 91-173 as amended by P. L. 95-164).**

I certify that the above training has been completed (signature of person responsible for training)

Bill Callen

7. Mine Name, ID, & Location of Training (if institution, give name & address)

State of Nevada - Division of Industrial [illegible]
MINE SAFETY & TRAINING SE[illegible]TION
400 W. King St., Suite 21[illegible]
Carson City, NV 89703

8. Date

7-17-14

I verify that I have completed the above training (signature of person trained)

MSHA Form 5000-23, Jan. 99 (revised)

Copy 1 - Employer's Personnel Record

"1-C"

MONDAY

Date 7-28-14	Weather Conditions Sunny	Job No. 101401
Foreman W. McHaney	Job Title/Contract No. Hazen Hot Plant	

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FALLON, NEVADA 89407
(775) 423-6085
FAX (775) 423-8410
NV. LIC NO. 24548 CA. LIC. NO. 339463

A & K EARTH MOVERS, INC.
JUL 31 2014
RECEIVED

Work Accomplished:

Type III w/ 64-22

Problems Incurred:

Extra Work Not Included in Contract: (reference work order number)

Material/Equipment Received (attach invoice and purchase order)

Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.

Employees		Phase 29150 Dense Grade			Phase 29199 29150 Stand By			Phase			Phase			Phase			Phase			Phase				
Name	Number	Code	Hours	Equip	Code	Hours	Equip	Code	Hours	Equip	Code	Hours	Equip	Code	Hours	Equip	Code	Hours	Equip	Code	Hours	Equip	Total Hour	Employees Signature
W.D. McHaney	11236		2	Foreman		4	Foreman																	
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
Teofilo	11427		2	1264 Plant		7	labor																6	WSM
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
Billy Davis	11408		2	labor		8	labor																9	[illegible]
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
Richard Whempner	11434		2	2231			labor																10	BD
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		8	Red
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
																							Total Hours	

E = Operating 3 = Daily Service 2 = Scheduled Service 1 = Maintenance

Mech Code: 1014-Brakes 1024-Chassis 1034-Drive Train 1044-Elec Sys 1054-Eng/Turbo 1064-Fuel Sys 1074-Hydraulics 1084-Tire/Truck 1124-Other

PAYROLL

"1-D"

Date	Weather Conditions	Job No.
8-1-14	P/CLOUDY	101401
Foreman	**Job Title/Contract No.**	
W. MCHANEY	HAZEN HOT PLANT	

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FALLON, NEVADA 89407
(775) 423-6085
FAX (775) 423-8410
NV. LIC NO. 24548 CA. LIC. NO. 339463

AUG 04 2014
RECEIVED

Work Accomplished:

HOT Mix PRODUCTION

Problems Incurred:

Extra Work Not Included in Contract: (reference work order number)

Material/Equipment Received (attach invoice and purchase order)

Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.

Employees Name	Number	Phase 29150 Code	Hours	Equip	Phase 29199 Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Total Hour	Employees Signature
BILLY DAVIS	1408		3	1/labor		7.5	1 labor																10.5	BD
		E 3 2 1	Mech Code LABOR		E 3 2 1	Mech Code LABOR		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
TEOFILO SERDA	11127		3	Plant 1264		8	labor																11.0	
		(E) 3 2 1	Mech Code		E 3 2 1	Mech Code LABOR		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
RICHARD WHEMPNER	117 3X		3	2231		6.5																	9½	RW
		(E) 3 2 1	Mech Code		E 3 2 1	Mech Code LABOR		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
William McHaney	1236		6	Foreman																			6	WSM
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
																							Total Hours	

E = Operating 3 = Daily Service 2 = Scheduled Service 1 = Maintenance

Mech Code: 1014-Brakes 1024-Chassis 1034-Drive Train 1044-Elec Sys 1054-Eng/Turbo 1064-Fuel Sys 1074-Hydraulics 1084-Tire/Truck 1124-Other

PAYROLL

"1-E"

WEDNESDAY

Date	Weather Conditions	Job No.
3-6-14	Sunny	101491
Foreman	**Job Title/Contract No.**	
W McHaney	Huizen Hot Plant	

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(775) 423-6085
FAX (775) 423-8410
NV. LIC NO. 24548 CA. LIC. NO. 339463

Work Accomplished:

Type II for Nixon #3570 1919.05 TON

Problems Incurred:

Extra Work Not Included in Contract: (reference work order number)

Material/Equipment Received (attach invoice and purchase order)

Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.

Employees Name	Number	Phase 29150 Code	Hours	Equip	Phase 29199 Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Total Hour	Employees Signature
Teofilo Serpa	11427	E 3 2 1	7 Mech Code PLANT	1265	E 3 2 1	5 Mech Code ~~LABOR~~	labor	E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		12	
Billy Davis	11408	E 3 2 1	7 Mech Code LABOR		E 3 2 1	5 Mech Code LABOR		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		12	
Richard Wittenmyer	11434	E 3 2 1	5 Mech Code	97-286	E 3 2 1	1 Mech Code	labor	E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		6	
Sergio	164 73	E 3 2 1	2 Mech Code	97-286	E 3 2 1	2½ Mech Code	labor	E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		4½	Sergio ML
William McHaney	11236	E 3 2 1	7 Mech Code	Foreman	E 3 2 1	6 Mech Code	Foreman	E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		13	WSM
																							Total Hours	

E = Operating 3 = Daily Service 2 = Scheduled Service 1 = Maintenance

Mech Code: 1014-Brakes 1024-Chassis 1034-Drive Train 1044-Elec Sys 1054-Eng/Turbo 1064-Fuel Sys 1074-Hydraulics 1084-Tire/Truck 1124-Other

PAYROLL

"1 - F"

8-7-14	Weather Conditions Cloudy	Job No. 101401
Foreman W. McHaney	Job Title/Contract No. HAZEN HOT PLANT	

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FALLON, NEVADA 89407
(775) 423-6085
FAX (775) 423-8410
NV. LIC NO. 24548 CA. LIC. NO. 339463

Work Accomplished:

TYPE II mix N.D.O.T. - NIXON
STACK TEST E.P.A.

Problems Incurred:

Extra Work Not Included in Contract: (reference work order number)

Material/Equipment Received (attach invoice and purchase order)

Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.	Invoice No.	Vendor/Eq.

Employees Name	Number	Phase 29150 Code	Hours	Equip	Phase 29199 Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Phase Code	Hours	Equip	Total Hour	Employees Signature
RICHARD WITEMPWER	11434		9	99-2863		4.5	LABOR																	
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		13½	RW
TEOFILO SERPA	11427		9	1264 PLANT		5	LABOR																	
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		14	B
BILLY DAVIS	11408		9	labor		5	labor																	
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		14	[illegible]
WILLIAM MCHANEY	11234		9	Foreman		5	Foreman																	
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		14	WSM
		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code		E 3 2 1	Mech Code			
																							Total Hours	

E = Operating 3 = Daily Service 2 = Scheduled Service 1 = Maintenance

Mech Code: 1014-Brakes 1024-Chassis 1034-Drive Train 1044-Elec Sys 1054-Eng/Turbo 1064-Fuel Sys 1074-Hydraulics 1084-Tire/Truck 1124-Other

PAYROLL

'2'

DATE	HOURS	TONS	AVERAGE	MONTHLY AVG	ANNUAL AVG	Annual Hrs
11/1/2013	3.8	728.58	191.73			
11/10/2013	3.9	814.54	208.86			
11/14/2013	1	44.15	44.15			
11/26/2013	2.2	362.73	164.88			
	10.9	1950.00		178.90	178.90	10.9
12/31/2013	0	0	#DIV/0!			
	0	0		#DIV/0!	178.90	10.9
1/22/2014	2.1	288.81	137.53			
1/23/2014	1.2	152.44	127.03			
	3.3	441.25		133.71	168.40	14.2
3/11/2014	3.5	334.79	95.65			
	3.5	334.79		95.65	154.01	17.7
4/25/2014	1.5	141.77	94.51			
	1.5	141.77		94.51	149.37	19.2
6/4/2014	1	170.25	170.25			
6/11/2014	5	951.73	190.35			
6/12/2014	3	715.46	238.49			
6/16/2014	3	611.79	203.93			
6/18/2014	2	355.4	177.70			
6/19/2014	3	630.52	210.17			
6/20/2014	5	1053.96	210.79			
6/21/2014	4	180	45.00			
6/22/2014	5	983.31	196.66			
6/24/2014	3	734.26	244.75			
6/25/2014	4	876.37	219.09			
6/26/2014	3	677.64	225.88			
6/27/2014	6	1238.06	206.34			
6/30/2014	4	892.45	223.11			
	51	10071.2		197.47	184.32	70.2
7/2/2014	1	214.53	214.53			
7/3/2014	4	783.16	195.79			
7/7/2014	3	705.37	235.12			
7/8/2014	1	154.17	154.17			
7/14/2014	2	361.99	181.00			
7/16/2014	4	1135.43	283.86			
7/17/2014	3	698.26	232.75			

'2-A'

7/28/2014	2	253.47	126.74			
	20	4306.38		215.32	191.19	90.2
8/1/2014	3	589.46	196.49			
8/6/2014	7	1927.05	275.29			
8/7/2014	8	2977.45	372.18			
8/8/2014	9	2787.3	309.70			
8/9/2014	4	952.02	238.01			
8/11/2014	2	343.69	171.85			
8/12/2014	7	2218.96	316.99			
	40	11795.93		294.90	223.05	130.2
9/9/2014	1	127.64	127.64			
9/18/2014	1	118.19	118.19			
9/19/2014	0.5	68.57	137.14			
9/20/2014	1	171.51	171.51			
9/22/2014	0.5	41.71	83.42			
	4	527.62		131.91	220.33	134.2

"3"

$ 24,840

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: A & K Earth Movers FIN A0637
Violation: Failure to install air pollution control equipment (PF1.054)
NOAV: XXXX

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$1,000**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$1,000	X	~~8~~ 1	=	~~$8,000~~ 1000
Dollar Amount		Number of Weeks		**Total Gravity Fine**

"3-A"

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

	+		=	
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

	+		=	
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) 150 %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+5%) X (Number of recent Violations) = 4 X 5 = 20

Total Penalty Adjustment Factors - **Sum of A & B:** **170** %

P-1,05Y

IV. Total Penalty

~~$8,000~~ $1000	X	170%	=	~~$13,600~~ 1700
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
~~$8,000~~ $1000	+	~~$13,600~~ 1700	=	~~$21,600~~ 2700
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date:** _____

"4"

A&K EARTH MOVERS
Since 1957

PPE – Pit Operations Acknowledgement

I, _____, acknowledge that I am required to wear personal protective equipment (PPE) while on site at any A & K Earth Movers, Inc. job site. This includes but not limited to hard hats, florescent vests, eye protection and appropriate shoes. If you were not issued any PPE (hard hat, florescent vest, eye protection, hearing protection) contact Jack Hisey/Safety Manager.

I acknowledge that a copy of A & K's Nevada Department Environmental Protection (NDEP) operating permits for each mine site are available on site for my review. I further acknowledge that I am familiar with the EMSHA safety requirements for proper use of equipment and proper placing of protective guards. I am required to notify my supervisors if I have any questions or concerns related to the above.

I acknowledge that disciplinary action will be taken for not following procedures or the requirements and or conditions of all permits.

_____ _____

Employee Date

As stated in A & K Safety Policy:

PERSONAL PROTECTIVE EQUIPMENT (PPE) HEAD, EYES, FACE, and EXTREMITIES FOR CONSTRUCTION WORK SITES/PROJECTS

Personal protective equipment shall be provided when:

- When working conditions present chemical, radiological, physical and mechanical hazards or other natural irritants in a manner capable of causing injury or impairment to any part of the body.
- There is a reasonable probability of exposure to a hazard, which can be prevented by such equipment.
- Company policy dictates that such equipment is worn at all times, in the workplace.
- The General Contractor Rule requires (posted at entry gates of the project, the GC's Office Trailer, or Contract Provision) Hard Hats and/or Safety Glasses at all times, on the site.

A&K Earth Movers, Inc. policy is that hardhats will be worn on jobs at all times. Safety glasses and face shields will be used when cutting, welding or grinding is taking place. This includes cutting and grinding plastic and metal pipe.

Personal protective equipment shall be; adequate (safe design and construction), properly selected to ensure protection from the probable hazard(s) and maintained in a reliable and in sanitary condition.

DISCIPLINARY ACTION GUIDELINES

In an effort to ensure a safe working environment and to prevent accidents and injuries, company safety rules will be enforced. The disciplinary procedures for violation of company safety rules are as follows:

- **1st offense** - Oral warning, with a notation kept in the employee's personnel records.
- **2nd offense** - A written warning with acknowledgment from the offending employee.
- **3rd offense** - Suspension without pay for a period <u>not to exceed</u> thirty (30) days.
- **4th offense/ nature of violation warrants** – Termination of employment with A&K Earth Movers,

In all cases, documentation shall be kept in the employee's personnel record. Whenever appropriate, employees violating company safety rules shall be required to participate in remedial safety training conducted by their supervisor or the Safety Mgr.

The following situations may warrant suspension, or dismissal:

- Willful removal or interference with a safety device or safeguard.
- Dangerous horseplay / inattention that threatens the life of an individual.
- Failure to use required personal protective equipment.
- Careless operation of a company vehicle in violation of traffic laws.
- Failure to report an obvious safety violation to management in a timely manner.
- Failure to promptly report accidents or injuries.
- Under the influence of drugs and/or alcohol while at work or operating a company vehicle have a confirmed positive random or post-accident drug and/or alcohol screen.

NOTE: These are only guidelines to follow. If a violation is serious the resulting disciplinary action could be up to and including termination.

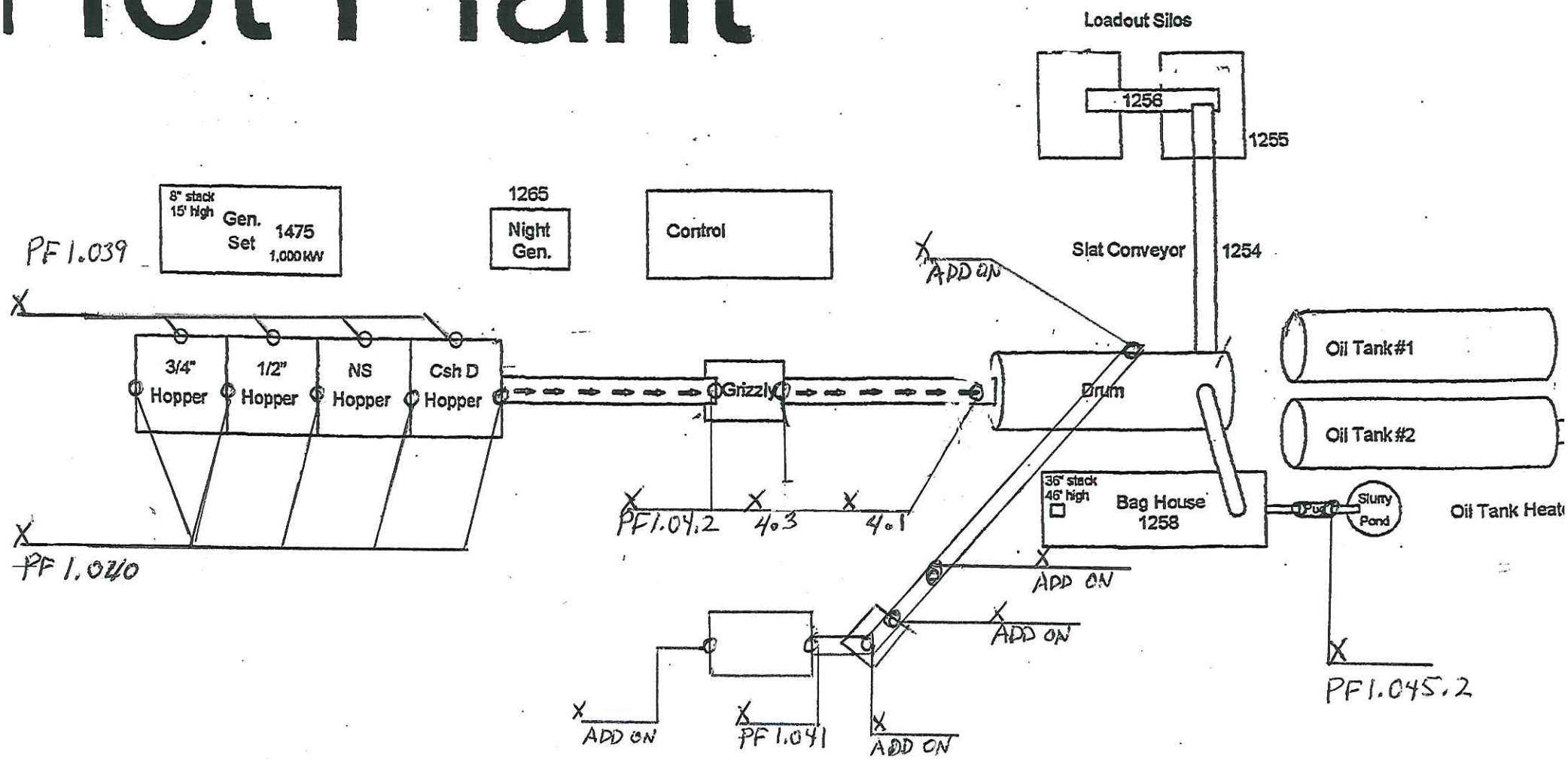
DATE X _____

TIME X _____

X _____
Supervisor

ALL X MUST be INTIALED

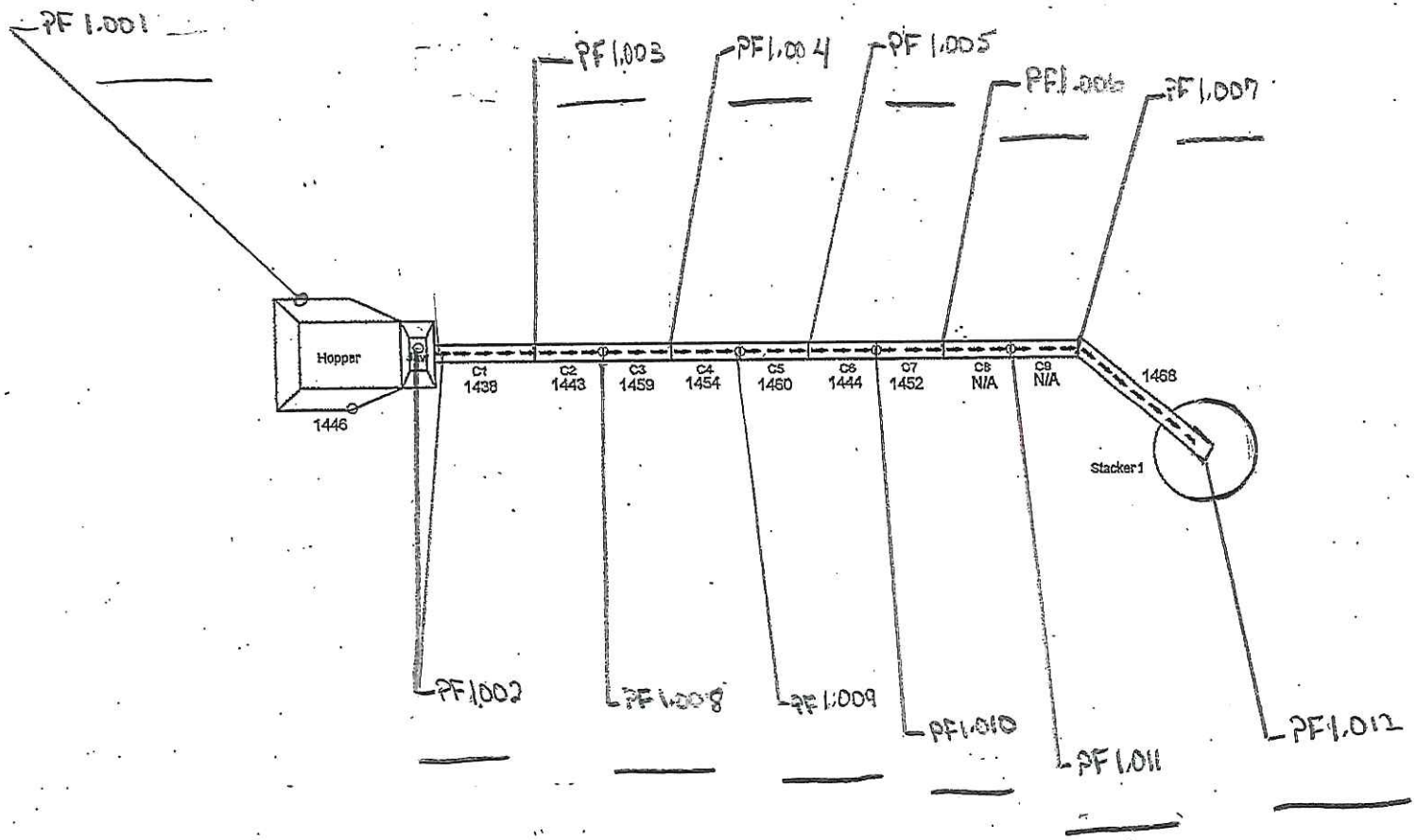
Hot Plant



HAZEN CRUSHER

Date _____

Sign _____



FEED BINS

GUARDING	
CAT WALKS CLEAN	
DRIVE BELTS	
TROUGH ROLLERS	
RETURN ROLLERS	
ELECTRICAL CONNECTIONS	

SCALPING SCREEN

GUARDING	
DRIVE BELTS	
REJECT CHUTE CLEAR	
SCREEN DECK	
HOLD DOWN CHAINS	
ELECTRICAL CONNECTIONS	

AGG BELT / 109 BELT

GUARDING	
DRIVE BELTS	
TROUGH ROLLERS	
RETURN TOLLERS	
ELECTRICAL CONNECTIONS	

DRUM

GUARDING	
DRIVE BELTS	
CAT WALKS CLEAN	
TROUGH ROLLERS	
RETURN ROLLERS	
ELECTRICAL CONNECTIONS	

ASPHALT TANKS

FIRE EXTINGUISHERS	
GUARDING	
DRIVE BELTS	
FIRE EXTINGUISHERS	
FLUID LEAKS	
CRIBBING	
STAIRWAY CLEAN	
DELIVERY HOSES SECURE	

FUEL TANK

FIRE EXTINGUISHER	
GUARDING	
FLUID LEAKS	
DELIVERY LINES CAPPED	
CONTAINMENT LINING SECURE	

PUT "A" IN BOX IF ITEM NEEDS ATTENTION
CHECK BOX IF ITEM IS IN GOOD ORDER

BAG HOUSE/PUGMILL

GUARDING	
DRIVE BELTS	
LADDERS CLEAR	
HAND RAILS SECURE	
AUGER MOUNT SECURE	
ELECTRICAL CONNECTIONS	

DRAG CONV / SILOS

GUARDING	
DRIVE BELTS	
STAIRWAY CLEAR	
DRIVE THROUGH CLEAR	
ELECTRICAL CONNECTIONS	

GEN-SET

BUSS BAR DOOR SECURE	
FIRE EXTINGUISHER	
FLUID LEAKS	
ACCESS COVERS	
ELECTRICAL CONNECTIONS	

OTHER

RAMPS	
SAFETY BERMS	
HOUSE KEEPING/DAILY CLEANING	

Opacity: _____
Time: _____
Date: _____
Taken by: _____

CORRECTION ACTION NEEDED:

_____
_____
_____
_____
_____
_____

CORRECTION ACTION TAKEN:

_____
_____
_____
_____
_____
_____

OPERATOR: _____

ATTACHMENT 3:

A&K Earth Movers Revised Penalty Matrix

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: A & K Earth Movers FIN A0637
Violation: Failure to install air pollution control equipment (PF1.054)
NOAV: 2512

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = $1,000

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$1,000	X	5	=	$5,000
Dollar Amount		Number of **Days**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) 150 %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+5%) X (Number of recent Violations) = 4 X 5 = 20

Total Penalty Adjustment Factors - **Sum of A & B:** **170** %

IV. Total Penalty

$5,000	X	170%	=	$8,500
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
$5,000	+	$8,500	=	**$13,500**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date:** _____

ATTACHMENT 4:

Bango Refining NV Penalty Information

2. Bango Refining NV, LLC, Churchill County

NOAVs #2517, 2518, 2520 and 2521 with combined proposed penalty of $31,800.

Bango Refining NV, LLC (Bango) operates a recycled motor oil-refining facility in Churchill County under Class 2 Air Quality Operating Permit #AP2992-1473.

The BAPC conducted an inspection of the Bango facility on July 31, 2014. While reviewing the monitoring records for calendar year 2013, the BAPC discovered that Bango had exceeded permit operating limitations set forth for Systems 1A, 5A, 7A and 12, which constituted four NOAVs as follows:

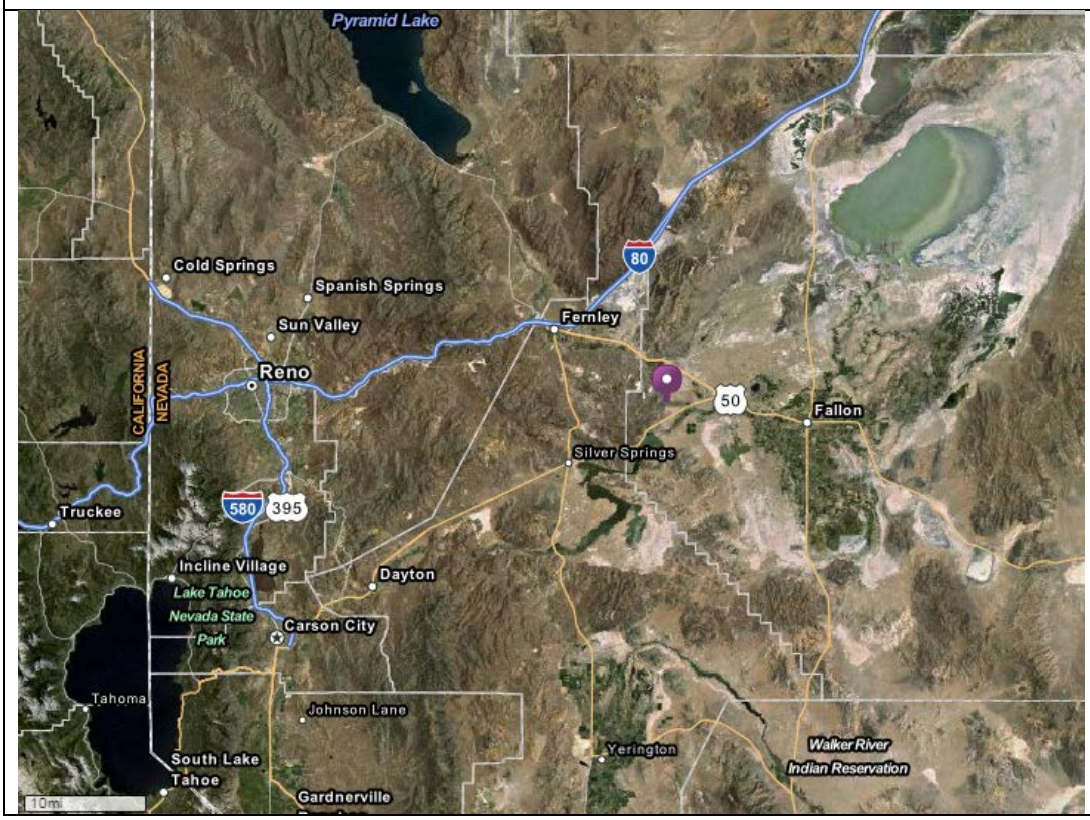
1. NOAV #2517: Failure to comply with throughput operating limitations of Systems 1A and 5A.
2. NOAV #2518: Failure to comply with fuel consumption operating limitation of System 1A.
3. NOAV #2520: Failure to comply with throughput operating limitations of System 7A.
4. NOAV #2521: Failure to comply with throughput operating limitations for units S2.026 and S2.027.

On September 16, 2014, an enforcement conference was held with Bango to review the findings and to determine if there were extenuating facts. Bango was able to provide additional information which reduced the number of violations, but acknowledged that several violations did occur. After reviewing the new information provided during the enforcement conference, the BAPC followed-up with a conference phone call to review the penalty matrix and provided the proposed penalty amount of **$31,800** based on the time basis the violations occurred over, the number of emission units involved in the violation, and no previous violations within the last 60 months. The company was cooperative and the BAPC discussed addressing some of the violations by revising the limits set forth in the permit. The NOAVs were issued on October 22, 2014. Bango did not appeal the NOAVs.

The pollutants of concern are volatile organic compounds (**VOC**s) from the oil products stored, processed and transferred in Systems 1A and 5A, and units S2.026 and S2.027, and the pollutants formed from the boiler combustion in system 1A including particulate matter (**PM**), oxides of nitrogen (**NOx**), carbon monoxide (**CO**) and **VOC**s. Operating this equipment at permitted limits is essential to comply with State and Federal Air Quality Standards. Failing to operate this equipment as permitted removes the affirmation that the equipment is operating in a manner that is protective of public health and the environment.

2. Bango Refining NV, LLC.

22211 Bango Road, Fallon, Nevada 89406
Churchill County (34.5, -119.04)



System 1A: Recycled Fuel Oil Refining Unit #1 (boiler)

System 7A: Hydrotreating Filtration Unit

System 12: Non-heated petroleum liquid tanks

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **Bango Refining NV, LLC.**
Violation: **Throughput exceedance for System 1A and 5A; 65,000 gal/day**
NOAV: **2517**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = __$600 ____

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	29	=	**$17,400**
Dollar Amount		Number of **Weeks**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = %5 X = _____

Total Penalty Adjustment Factors **- Sum of A & B:** **N/A** %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$17,400**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **Bango Refining, LLC**

Violation: **Fuel Usage exceedance for System 1A; 7,843.0 standard cubic feet of natural gas per hour**

NOAV: **2518**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$600**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	6	=	**$3,600**
Dollar Amount		Number of Days		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

0	+	0	=	0
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

$1,200	+	0	=	$1,200
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = X = _____

Total Penalty Adjustment Factors **- Sum of A & B:** **N/A** %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$3,600**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **Bango Refining NV, LLC.**

Violation: **Throughput exceedance for System 7A 2,300 gallons per hour of refined oil products**

NOAV: **2520**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$600**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	16	=	**$9,600**
Dollar Amount		Number of **Days**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = %5 X = _____

Total Penalty Adjustment Factors **- Sum of A & B:** **N/A** %

IV. Total Penalty

_____	X	_____	=	N/A
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$9,600**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **Bango Refining NV, LLC.**

Violation: **Throughput exceedance on System 12; 7,000,000 gal per 12-month rolling period**

NOAV: **2521**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$600**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty =

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	2	=	**$1,200**
Dollar Amount		Number of **Emission Units**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = %5 X = _____

Total Penalty Adjustment Factors **- Sum of A & B:** **N/A** %

IV. Total Penalty

_____	X	_____	=	N/A
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$1,200**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

ATTACHMENT 5:

Robinson Nevada Mining Penalty Information

4. Robinson Nevada Mining Company, White Pine County

NOAVs # 2498, 2500, 2501, 2503, 2504 and 2505 with proposed combined penalty of $55,100.

Robinson Nevada Mining Company (Robinson) operates a copper mine in White Pine County under Class 2 Air Quality Operating Permit #AP1021-0373 issued on October 31, 2011.

On June 25, 2013, a compliance inspection was conducted by the BAPC. During the inspection the BAPC discovered a number of violations that were categorized into seven NOAVs as follows:

1. NOAV 2498: Failure to conduct required initial opacity compliance demonstration (IOCD) testing on 9 systems.
2. NOAV 2500: Failure to conduct required monitoring/recordkeeping on 9 systems over 14 weeks.
3. NOAV 2501: Failure to comply with a throughput operating limitation on 9 systems over 14 weeks.
4. NOAV 2503: Failure to install/operate required air pollution controls on 5 systems.
5. NOAV 2504: Constructing/operating regulated emission units without a valid air quality operating permit for 5 systems.
6. NOAV 2505: Failure to conduct required compliance source testing for 2 systems.
7. NOAV 2506: Failure to control (facility) fugitive dust.

On June 25 2014, the BAPC held an enforcement conference with Robinson. During the conference, Robinson was able to provide some new information, but acknowledged that several violations did occur. After reviewing the new information, the BAPC followed up with a telephone conference call at a later date, to review the penalty matrix and provided the proposed penalty amount of **$55,100.** The penalty amount was based on the period of time over which the violations occurred over, the number of emission units involved in the violations, and no previous violations within the last 60 months. Due to the atypically high count of violations and systems involved in calculation of Robinson's penalty, the BAPC utilized discretion in applying the lowest multipliers to prevent an astronomic penalty value, which the BAPC will discuss in detail during discussion of the penalty matrix. Robinson was cooperative, and has addressed many of the issues with a revision to the permit. The NOAVs were issued on October 24, 2014 and Robinson did not appeal the NOAVs.

Pollutants of concern are all ambient air quality standards including: particulate matter (**PM**), oxides of nitrogen (**NO_x**), sulfur dioxide (**SO_2**), carbon monoxide (**CO**) and volatile organic compounds (**VOC**s). **PM** emissions occur from ore and lime handling systems. Emissions as a product of combustion from engines powering generators and fire pumps include **PM**, **NO_x**, **CO, SO_2** and **VOC**s.

Robinson's violations exhibit nearly every category of violation across several emission units, including: failure to perform IOCD and compliance tests, failure to perform monitoring and recordkeeping, failure to comply with throughput limits, failure to operate emission controls, failure to permit emission units, and failure to control fugitive dust. These permit requirements are crafted so that Robinson's pollutant emissions comply with State and Federal Air Quality Standards, and therefore, are protective of the public health and the environment. Noncompliance with the permit requirements removes the affirmation that the facility is operating in a manner that is protective of public health and the environment.

4. Robinson Nevada Mining Company

4232 West White Pine County Road 44
White Pine County, NV (39.26, -115.01)

Robinson facility

Unpermitted lime mill

Unpermitted generator

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**

Violation: **NAC 445B.275 - Failure to complete required Initial Opacity Compliance Demonstration (IOCD) performance testing within specified time period.**
NOAV: **2498**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = $200

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$200	X	9 systems	=	**1,800**
Dollar Amount		Number of **Systems**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**1,800**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**
Violation: **NAC 445B.275 - Failure to conduct required monitoring and recordkeeping**
NOAV: **2500**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **__600____**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	14	=	**$8,400**
Dollar Amount		Number of **Weeks**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.	0	+	0	=	0
	Delayed Costs		Avoided Costs		**Economic Benefit**
Subtotal	56,950	+	0	=	56,950
	Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$8,400**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**
Violation: **NAC 445B.275 - Exceeding permitted throughput limits**
NOAV: **2501**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **____$600____**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$600	X	14	=	**$8,400**
Dollar Amount		Number of **Weeks**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$8,400**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**

Violation: **NAC 445B.275 - Failure to install and operate required air pollution control equipment**

NOAV: **2503**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$1,000**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$1,000	X	5 units	=	**$5,000**
Dollar Amount		Number of **Systems**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$5,000**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**
Violation: **NAC 445B.275 - Operating unpermitted equipment.**
NOAV: **2504**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = **$3,000**

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$3,000	X	7 units	=	**$21,000**
Dollar Amount		Number of Systems		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$21,000**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

For: **RNMC - FIN A0383**

Violation: **NAC 445B.275 - Failure to conduct required performance testing within specified time period**

NOAV: **2505**

I. Gravity Component

A. Base Penalty: $1,000 or as specified in the Penalty Table = $5,000

B. Extent of Deviation – Deviation Factors:

1. Volume of Release:

A. For CEMS or source testing, see *Guidelines* on page 3.

Adjustment to Base Penalty = _____

B. For opacity, see *Guidelines* on page 3 and refer to table below.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = _____

2. Toxicity of Release: Hazardous Air Pollutant (if applicable)

3. Special Environmental/Public Health Risk (proximity to sensitive receptor):

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

Deviation Factors 1 x 2 x 3:

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = _____

D. Multiple Emission Unit Violations or Recurring Events:

$5,000	X	2 Systems	=	**$10,000**
Dollar Amount		Number of **Systems**		**Total Gravity Fine**

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

II. Economic Benefit

A.

_____	+	_____	=	_____
Delayed Costs		Avoided Costs		**Economic Benefit**

Subtotal

_____	+	_____	=	_____
Total Gravity Fine		Economic Benefit		**Fine Subtotal**

III. Penalty Adjustment Factors

A. Mitigating Factors _____ %

B. History of Non-compliance

1. Similar Violations (NOAVs) in previous 5 years:
   Within previous year (12 months) = 3X (+300%)
   Within previous three years (36 months) = 2X (+200%)
   Occurring over three years before = 1.5X (+150%) _____ %

2. All Recent Violations (NOAVs) in previous 5 years:
   (+**5%**) X (Number of recent Violations) = 5% X % = % _____ %

Total Penalty Adjustment Factors **- Sum of A & B:** _____ %

IV. Total Penalty

_____	X	_____	=	_____
Penalty Subtotal (from Part II)		Total Adjustment Factors		**Total Adjustment**
_____	+	_____	=	**$10,000**
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		**Total Penalty**

Assessed by: _____ **Date**: _____

Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations

Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release

Determining Volume of Release based on opacity:

	1	1.5	2.5	4	6
	Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount
Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%

Determining Volume of Release based on CEMS or source testing:

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

Source & pollutant info	Emissions/(Permit limit)	Adjustment to Base Penalty
Minor sources:	$r < 1.2$	(none)
(*all pollutants are minor*)	$\boldsymbol{r \geq 1.2}$	proportional to *r*
Major & SM sources:		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to *r*

Hazardous Air Pollutant (HAP) – *see* Part I.B.2 Toxicity of Release (2X multiplier)

ATTACHMENT 6:

R103-14 Presentation Handout

State Environmental Commission
December 3, 2014

Petition R 103-14

South Fork Reservoir Water Quality Standards

Randy Pahl, Special Projects Coordinator
775-687-9453
rpahl@ndep.nv.gov
Nevada Division of Environmental Protection
Bureau of Water Quality Planning

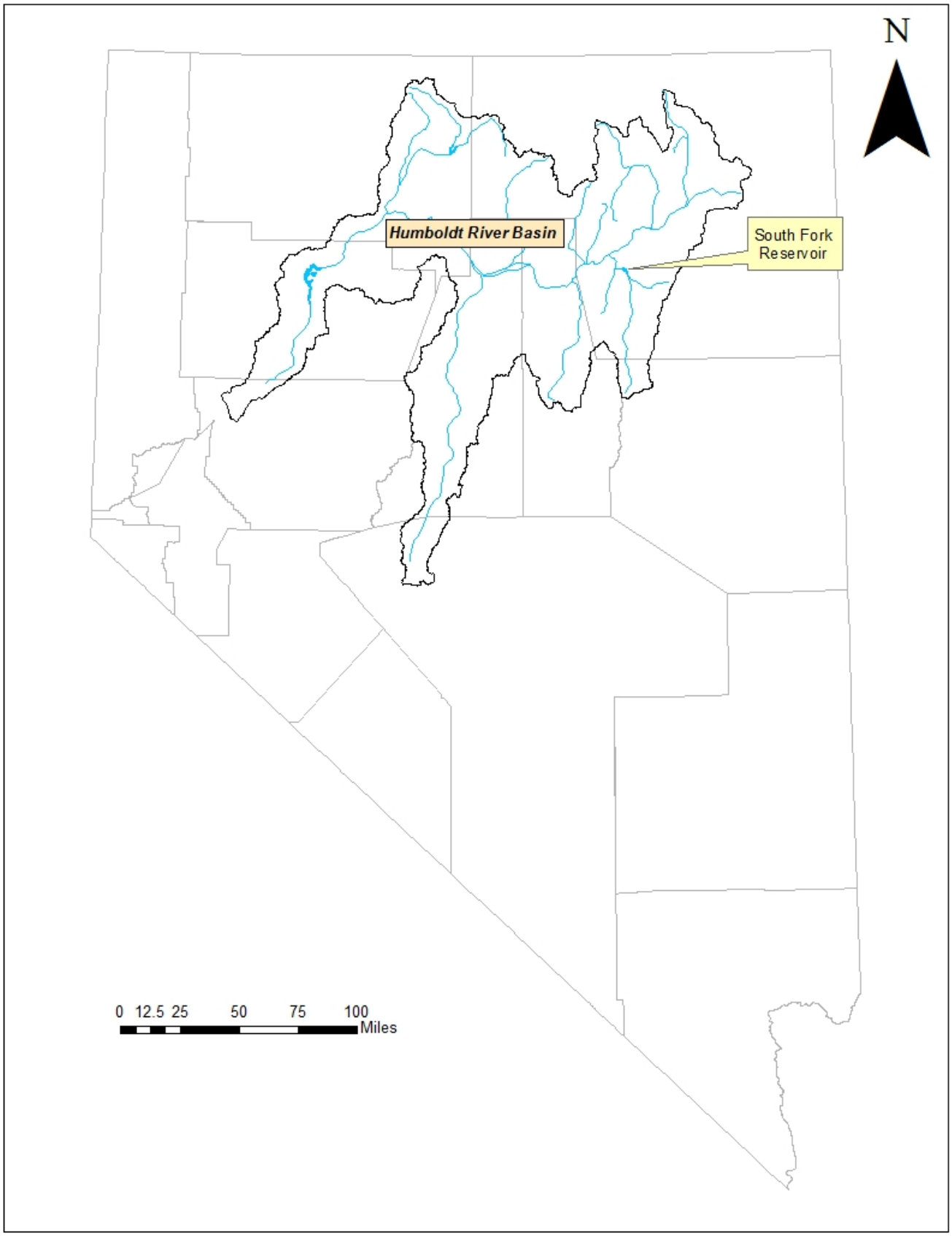


Figure 1. Location Map

Public Workshops

- Carson City – May 19, 2014
- Elko – May 21, 2014

Public comments accepted through June 13, 2014. No substantive comments received. No changes to proposal needed as a result.

Key Elements of Proposed Water Quality Standards Revisions

- Separate out South Fork Reservoir from the South Fork Humboldt River
- Establish appropriate beneficial uses and water quality criteria needed to protect these beneficial uses

Separate out South Fork Reservoir

- Current South Fork Humboldt River reaches in NAC created in 1970s. No recognition of South Fork Reservoir as it was constructed in 1988/89.
- Reservoir currently falls within a reach of the South Fork Humboldt River ***(Figure 2)***
- Currently protected under South Fork Humboldt River standards (including beneficial uses and water quality criteria)
    - Physical/hydrologic characteristics of reservoir differ from river – as a result, some different water quality criteria are needed
- ***Figure 3*** – depicts proposed reaches – create 3 new reaches

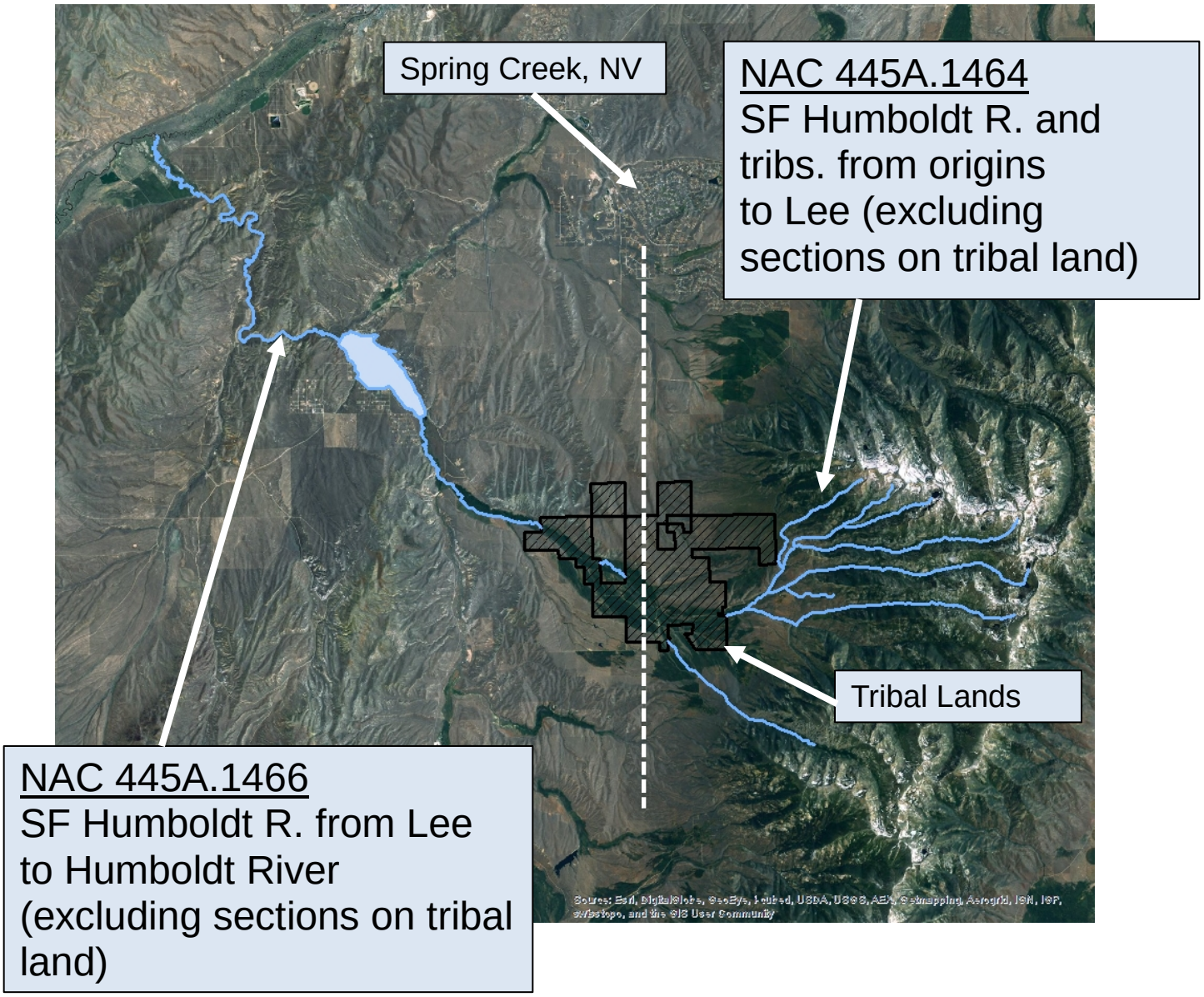


Figure 2. Existing South Fork Humboldt River Reaches

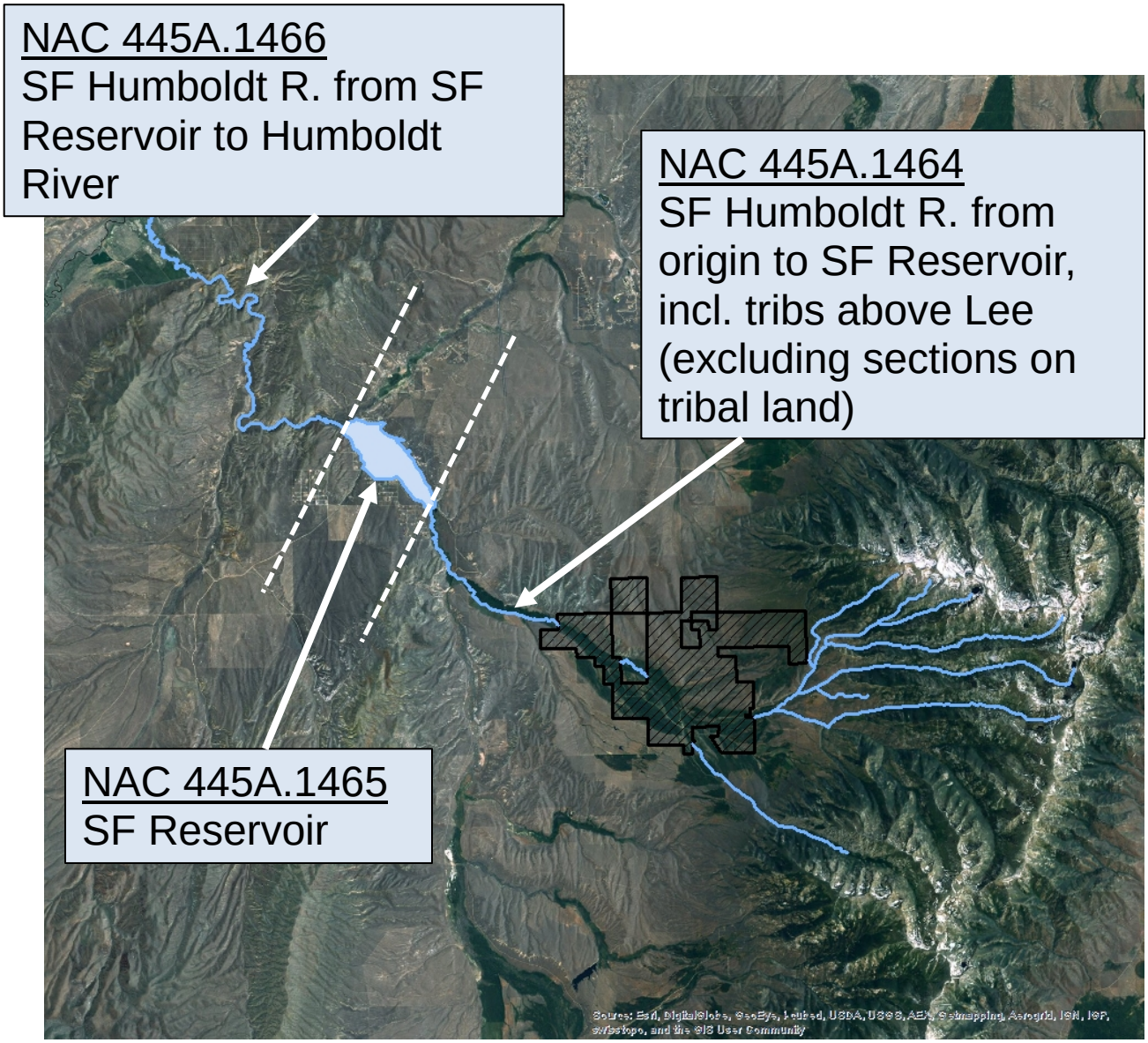


Figure 3. Proposed Reaches

Proposed Beneficial Uses for South Fork Reservoir

- The following beneficial uses are to be spelled out for South Fork Reservoir:
  - Livestock Watering
  - Irrigation
  - Aquatic life (Trout)
  - Contact recreation
  - Noncontact recreation
  - Municipal or domestic supply
  - Industrial
  - Propagation of Wildlife
- Same uses as currently assigned to South Fork Humboldt River from previous SEC actions

Proposed Water Quality Criteria for South Fork Reservoir

- A suite of water quality criteria are proposed to protect the beneficial uses of South Fork Reservoir
- Criteria based upon EPA guidance, and NDEP research and determinations (see Table 1)

Table 1. Proposed Water Quality Criteria for South Fork Reservoir

- Highlighted parameters and criteria designed for reservoir
- Other parameters/criteria typical for other waters in NV
    - Currently set for South Fork Humboldt River in previous SEC actions

PARAMETER	WATER QUALITY STANDARDS FOR BENEFICIAL USES	MOST RESTRICTIVE BENEFICIAL USE	ADDITIONAL CONDITIONS
Temperature	S.V. ≤ 20°C ΔT = 0°C	Aquatic life	
pH	S.V. 6.5 - 9.0	Aquatic life, contact recreation	
Dissolved Oxygen	S.V. ≥ 6.0 mg/l	Aquatic life	When lake stratified, criterion apply only to epilimnion
Chlorophyll-a	Jun-Sep Avg. ≤ 10 µg/l	Aquatic life, contact recreation	Reservoir-wide average for upper 1 meter
Total Phosphorus	Jun-Sep Avg. ≤ 0.04 mg/l		
Total Nitrogen	Jun-Sep Avg. ≤ 0.52 mg/l		
Nitrite	S.V. ≤ 0.06 mg/l	Aquatic life	
Total Ammonia	Varies with temperature and pH (see NAC 445A.118)	Aquatic life	
Total Suspended Solids	S.V. ≤ 25 mg/l	Aquatic life	
Turbidity	S.V. ≤ 10 NTU	Aquatic life	
Color	S.V. ≤ 75 PCU	Municipal or domestic supply	
Secchi Depth	Jun-Sep Avg. ≥ 4.0 meters	Contact recreation	Reservoir-wide average
Total Dissolved Solids	S.V. ≤ 500 mg/l or the 95th percentile (whichever is less)	Municipal or domestic supply	
Chloride	1-hour Avg. ≤ 860 mg/l 96-hour Avg. ≤ 230 mg/l	Aquatic life	May be exceeded only once every 3 years
Sulfate	S.V. ≤ 250 mg/l	Municipal or domestic supply	
Alkalinity	S.V. ≥ 20 mg/l	Aquatic life	
E. coli	A.G.M. ≤ 126 no./100 ml S.V. ≤ 410 no./100 ml	Contact recreation	
Fecal Coliform	S.V. ≤ 1000 no./100 ml	Irrigation	

Development of Nutrient Criteria

- Research has shown that algae levels (chlorophyll-a) are a more reliable indicator of waterbody health than Phosphorus and Nitrogen.
    - EPA encourages establishing criteria for both Chlorophyll-a (response variable) and Phosphorus/Nitrogen (causal variable)
- Chlorophyll-a criteria (10 µg/l)
    - No EPA Guidance
    - Based upon research of literature and other states' regulations as to levels needed to support Coldwater Fishery and Recreation
- Total Phosphorus (0.04 mg/l) and Total Nitrogen (0.52 mg/l) criteria established to maintain the Chlorophyll-a criteria
    - Based upon South Fork Reservoir monitoring data AND observed relationships between Phosphorus/Nitrogen and Chlorophyll-a

Special Considerations for Nutrient Criteria

- Since algae levels (chlorophyll-a) are a more reliable indicator of waterbody health, NDEP desires to primarily focus on chlorophyll-a levels in their health assessments. Therefore, a footnote is proposed which outlines NDEP assessment approach for nutrient criteria:
    - Health assessments (303(d) List) are to be based solely on chlorophyll-a data (if available)
    - If no chlorophyll-a data exist, assessments are to be based upon compliance with the Total Phosphorus and Total Nitrogen criteria
- Consistent with EPA Guidance

Compliance with All Proposed Criteria

- Water quality conditions meet proposed criteria except for the following parameters
  - Temperature (2012 303(d) List of Impaired Waters)
    - NDEP undertaking an effort to review temperature standards throughout the state. Completion date unknown
  - Chlorophyll-a, Total Phosphorus and Total Nitrogen (met in 2009, exceeded in 2010)
    - Fact that all 3 were exceeded in the same year, suggests a good linkage between the 3 criteria – this is a desirable situation

QUESTIONS?

ATTACHMENT 7:

R118-14 Presentation Handout

State Environmental Commission Proposed Regulation Amendments

R118-14

Public Water Systems

NAC 445A.450 to 445A.5335 and 445A.65825 to 445A.67185

Nevada Division of Environmental Protection
Bureau of Safe Drinking Water

December 3, 2014

Overview of Proposed Amendments

- Adopt Federal Revised Total Coliform Rules
- Adopt Federal Lead Free Amendments
  - Reduction of Lead in Drinking Water Act
  - Community Fire Safety Act
- Amendments to Design and Construction Regulations
  - Reference Provisions and Publications updated to current versions
- General "Clean-up"

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Public Participation

- Public Workshops
  - Tonopah, NV ~ November 5, 2014
  - Elko, NV ~ November 6, 2014
  - Las Vegas, NV~ November 13, 2014
  - Carson City, NV ~ November 18, 2014
- Videoconference Water Workshop
  - November 14, 2014
- Written Comments
- E-mail Comments

Revised Total Coliform Rule (RTCR)

- Total Coliform Rule Effective: 1990
- Decision to revise: 2003
- Advisory Committee Convened: July 2007
- Proposed Rule: July 14, 2010
  - Comments Due: October 13, 2010
- Final Rule: February 13, 2013
- Minor Corrections: February 26, 2014
- Effective: April 1, 2016
  - http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/regulation_revisions.cfm 40 CFR Subpart Y

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Revised Total Coliform Rule Regulatory Revisions

- Overarching Goal
  - Improve public health protection by reducing the pathways through which fecal contamination and pathogens can enter the distribution system
- Monitoring
  - Alleviates increased monitoring after Total Coliform positive
- Total Coliform presence
  - Violation eliminated
  - Find and Fix process
- E.coli presence
  - Find and Fix process
- Site Sampling Plans
  - More flexibility in repeat locations
- Seasonal Systems
  - Start-up Procedures

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Lead Free Act Amendments

- LCB Section 1
  - Reduction of Lead in Drinking Water Act
  - Community Fire Safety Act
- LCB Section 8 and 12
  - Green-lined version addresses public comment

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Sec. 8. NAC 445A.66085 is hereby amended to read as follows:

445A.66085 "Lead-free" means, with regard to:

1. Solder and flux, that not more than 0.2 percent of the composition of the solder or flux is lead.

2. Pipes, ~~[and]~~ fittings ~~[,]~~ *and fixtures,* that not more than ~~[8]~~ *a weighted average of 0.25* percent of the composition of the *wetted surfaces of the* pipe, ~~[or]~~ fitting *or fixture* is lead ~~[.]~~, *as calculated in accordance with Standard 372 of the* American National Standards Institute and the *National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.*

~~[3. Gate valves which are 2 inches in diameter or more, service saddles and fire hydrants, that:~~

~~(a) Not more than 8 percent of the composition of the gate valve, service saddle or fire hydrant is lead; and~~

~~(b) The gate valve, service saddle or fire hydrant complies with Standard 61 of the National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.]~~

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Lead Free Act Amendments

- Section 12, Subsection 3

3. Any pipes, fittings, *fixtures,* solder, ~~[or]~~ and flux~~[, service saddles, fire hydrants and gate valves]~~ used in the installation or repair of a public water system must be lead-free, except gate valves which are 2 inches in diameter or larger, service saddles and fire hydrants, as exempted by the Federal Act, defined in NAC 445A.450. ~~[and comply with section 316.1.3 of the Uniform Plumbing Code.]~~

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Lead Free Act Amendments

- LCB Section 7
  - Determined to be Compatible with Drinking Water
    - Add ANSI/NSF Standard 372
- Section 9
  - Adopt by Reference-Standard 372 & Uniform Plumbing Code
    - 372-Lead Content (0.25% of Wetted Perimeter)
- Section 10
  - Comply with Adopted References-Standard 372 & Uniform Plumbing Code

Adoption by Reference of Manuals

Section 9 (NAC 445A.6663)

Manual	Current Regulation	Proposed Regulation
AWWA	February 20, 1997	July 1, 2014
ANSI & NSF	February 20, 1997	July 1, 2014
D3212	February 20, 1997	July 1, 2014
21 CFR 177.2420	February 20, 1997	Removed
Manual of Cross Connection Control	Ninth Edition	Tenth Edition
Recommended Practice for Backflow Prevention and Cross-Connection Control	1990 Edition	Third Edition

Adoption by Reference of Manuals

Section 9 (NAC 445A.6663)

Manual	Current Regulation	Proposed Regulation
Recommended Standards for Water Works	1992 Edition	2012 Edition
Standard Methods for the Examination of Water and Wastewater	19th Edition	22nd Edition
Standard Specification for Public Works Construction	1996 Edition	a.k.a Orange Book 2012 Edition
Uniform Design and Construction Standards for Water Distribution Systems	1995 Edition	Uniform Design and Construction Standards for Potable Water Distribution Systems Third Edition
Uniform Plumbing Code	1994 Edition	2012 Edition

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Miscellaneous Amendments

Section 12, Subsection 2

- Choice of materials for a distribution system
  - Incorporates language to ensure that materials selection for all components are based on the corrosivity of the water and soil.
- Green-lined version addresses Public Comment

2. The choice of materials for ~~[the pipes of]~~ a distribution system must be based on the properties of the soil and water. In areas where

(a) The water is corrosive, ~~[metallic pipe]~~ ~~[metal]~~ metallic pipe must not be used.

(b) The groundwater or soil is contaminated with volatile or synthetic organic chemicals, plastic ~~[pipe]~~ and ~~[gasketed pipe]~~ ***gaskets*** must not be used.

= unless otherwise approved by the Division or the appropriate district board of health in accordance with NAC 445A.6665.

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Miscellaneous Amendments

Amendment	Impacted Section(s)
Population cap reference for Clark County updated	Section 1
Update location and price to attain Reference publications	Sections 4, 5, 6, 9
Cross referencing of Adoption by Reference publications	Section 10, 12,13, 14, 15
Redaction of ANSI/NSF Standard 54	Section 11

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Questions?

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ATTACHMENT 8:

"Green-lined" Amendment

PROPOSED REGULATION OF

THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R118-14

With Proposed Agency Amendments

December 2, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted. Matter in **bold double underline** is a proposed Agency Amendment subsequent to LCB review; matter in double strikethrough brackets ~~[omitted material]~~ is material to be omitted.

Sec. 8. NAC 445A.66085 is hereby amended to read as follows:

445A.66085 "Lead-free" means, with regard to:

1. Solder and flux, that not more than 0.2 percent of the composition of the solder or flux is lead.

2. Pipes, ~~[and]~~ fittings ~~[,]~~ *and fixtures,* that not more than ~~[8]~~ *a weighted average of 0.25* percent of the composition of the *wetted surfaces of the* pipe, ~~[or]~~ fitting *or fixture* is lead ~~[.]~~, *as calculated in accordance with Standard 372 of the* **American National Standards Institute and the** *National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.*

~~*[3. Gate valves which are 2 inches in diameter or more, service saddles and fire hydrants, that:*~~

~~*(a) Not more than 8 percent of the composition of the gate valve, service saddle or fire hydrant is lead; and*~~

~~*(b)] The gate valve, service saddle or fire hydrant complies with Standard 61 of the National Sanitation Foundation International, as adopted by reference in NAC 445A.6663.]*~~

Sec. 12. NAC 445A.67125 is hereby amended to read as follows:

445A.67125 1...

2. The choice of materials for ~~[the pipes of]~~ a distribution system must be based on the properties of the soil and water. In areas where:

(a) The water is corrosive, ~~[metallic pipe]~~ ~~[*metal*]~~ metallic pipe must not be used.

(b) The groundwater or soil is contaminated with volatile or synthetic organic chemicals, plastic ~~[pipe]~~ and ~~[gasketed pipe]~~ ***gaskets*** must not be used.

➥ unless otherwise approved by the Division or the appropriate district board of health in accordance with NAC 445A.6665.

3. Any pipes, fittings, ***fixtures,*** solder, ~~[or]~~ and flux~~[, *service saddles, fire hydrants and gate valves*]~~ used in the installation or repair of a public water system must be lead-free, **except gate valves which are 2 inches in diameter or larger, service saddles and fire hydrants, as exempted by the Federal Act, defined in NAC 445A.450**. ~~[and comply with section 316.1.3 of the Uniform Plumbing Code.]~~

ATTACHMENT 9:

Letter submitted to EPA from NDEP

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Director

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Division of Environmental Protection
Division of Forestry
Division of State Lands
Division of State Parks
Division of Water Resources
Conservation Districts Program
Natural Heritage Program
State Historic Preservation Office

STATE OF NEVADA
Department of Conservation and Natural Resources

November 14, 2014

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Jo Ellen Darcy
Assistant Secretary of the Army (Civil Works)
U.S. Army Corps of Engineers
108 Army Pentagon
Washington, DC 20310-0108

Dear Administrator McCarthy and Assistant Secretary Darcy:

Re: Definition of "Waters of the United States" Under the Clean Water Act Proposed Rule: Docket ID No. EPA-HQ-OW-2011-0880

The State of Nevada (State) appreciates the opportunity to provide the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) with comments on the proposed national rulemaking Definition of "Waters of the United States" Under the Clean Water Act (79 Fed. Reg. 22188, April 21, 2014) (Proposed Rule). We write to express our comments on the Proposed Rule, our concerns regarding its potential impacts on our citizens, businesses and water quality protection programs, and to provide suggested revisions for consideration by EPA and the Corps.

The State has carefully followed the progress of the Proposed Rule and has participated in many presentations and discussions with EPA, both individually and as a member of organizations including the Environmental Council of States and the Association of Clean Water Administrators. While we appreciate the efforts made by EPA to explain the Proposed Rule and its ramifications, we retain a number of fundamental concerns and take this opportunity to present them formally. Although the Proposed Rule was presented by EPA as an attempt to add clarity, if passed in its present form it would result in inappropriate expansion of jurisdiction in

direct contradiction to Supreme Court determinations, in particular *Rapanos v. United States*, 547 U.S. 715 (2006) (Rapanos).

I. Participation by the Corps

We are concerned about the lack of participation by the Corps, a critical partner in Clean Water Act implementation. Because the Corps makes the jurisdictional determinations under section 404, we believe it is crucial for the Corps to be involved in any discussions of the proposed rule so that they can hear our concerns, we can hear how they propose to implement the rule, and we can work together to improve the process.

II. Lack of Consultation with States

States are the primary protectors of water quality, either through state law or through federal delegation, and the Proposed Rule should give as much weight and deference as possible to state needs, priorities and concerns. States should have been consulted early on during development of the Proposed Rule to provide input on how it would impact their current activities under the various CWA programs, and how the extent of jurisdiction may change dependent on their current authority under state laws and regulations. Meaningful dialogue with states would have helped create a more workable and effective rule. Instead, EPA has attempted to collaborate with the states and other affected parties after the fact to address issues and concerns with an already released Proposed Rule. Without further evaluation and substantive revision, the Proposed Rule would unnecessarily burden development projects, intrude into water appropriation decisions made under State water law, and adversely affect State water quality protection programs.

According to EPA, one of the reasons for the Proposed Rule was that many states are unable to protect waters not under CWA jurisdiction. EPA based this conclusion on a faulty study published by the Environmental Law Institute, which surveyed legal constraints on state regulatory programs. However, many of the "constraints" listed in the report are merely administrative procedural conditions that do not actually prevent state protection of waters. EPA's reliance on this study to demonstrate need for the proposed rule is defective and they should work more closely with states to determine more accurately where the needs truly lie.

Nevada has very strong laws and regulations to preserve and protect Waters of the State, which are defined as all waters situated wholly or partly within or bordering upon this State, including but not limited to all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems and all bodies or accumulations of water, surface and underground, natural and artificial. The State has authority to protect all waters whether or not they are subject to CWA jurisdiction, and has carried out this authority effectively and efficiently for decades.

Any proposed revision to the CWA should serve to support and assist states in their implementation of water protection programs, both state and federal. In its current form, the Proposed Rule does not meet this test.

III. The Connectivity Report

EPA has stated that new waters are not added to CWA jurisdiction by the Proposed Rule. Although new categories of waters are not added by the Proposed Rule, the definitions result in dramatic increases in scope for already included types. Where previously many questionable waters were evaluated for jurisdiction on a case-by case basis, the Proposed Rule increases the inclusion of many waters on an automatic, per se basis.

EPA's proposed treatment of tributaries is a prime example. In Rapanos, the court determined that a key factor in whether or not a tributary stream was declared jurisdictional should be whether the stream has a significant connection (or "nexus") with a clearly jurisdictional waterway. While this is a sensible concept, it is complicated by lack of agreement on what is "significant."

In an attempt to resolve this situation, the Proposed Rule was accompanied by a connectivity report: a compilation of scientific studies which purported to show that all waters are connected physically, chemically or biologically, no matter how speculative or insubstantial the connection might be. EPA used the report to conclude that all water are connected, so every tributary has a significant connection and is therefore jurisdictional, regardless of size or frequency of flow.

Such a conclusion directly contradicts the Supreme Court's determinations and represents an inappropriate and unreasonable expansion of federal regulation to include insignificant streams and even dry channels which may not see water for years at a time. This overly simplistic position is unacceptable and illogical: insignificant streams cannot have significant impacts.

Additional concerns exist regarding wetlands, ditches or tributaries "adjacent" to jurisdictional waters or even within a flood plain. The Proposed Rule contains many examples of water features pulled into jurisdiction despite a lack of obvious connection. Sweeping jurisdiction of large features such as flood plains and wetlands provides unwarranted authority over extensive tracts of waters and lands that were not previously regulated under the CWA.

The principal question in the rulemaking is not one of science, but of legal authority. The connectivity report should not be used to support a rule that is unlimited in scope.

IV. Jurisdictional Determination

Disagreement about CWA jurisdiction has been ongoing since the inception of the Act. Over the years EPA guidance, policy and court cases expanded the scope of CWA coverage. It took multiple actions by the Supreme Court to reign in CWA jurisdiction to be more consistent with

original intent. It is apparent that the Proposed Rule attempts to undo those constraints and once again continue the expansion of jurisdiction.

The original intent of the Clean Water Act was to protect interstate commerce though federal regulation of navigable waters. We appreciate that EPA is attempting to add clarity. While the sweeping inclusion of all waters does reduce uncertainty, the CWA was not intended to federalize all state waters. The redefinition of Waters of the United States in the Proposed Rule expands jurisdiction over sweeping areas of water and land that have no clear link to interstate commerce or navigation, including flood plains, wetlands, intermittent streams, and even ephemeral channels which are dry except during infrequent storm events.

The categorical definitions presented in the Proposed Rule are problematic because they do not capture the intent of the CWA. Application of the proposed definitions under varied environmental conditions leads to inappropriate results, such as the inclusion of marginal waters or dry channels which obviously have no significant connection to jurisdictional waters.

The complexity involved in hydrologic definitions is highlighted by a recent attempt by the Corps to explain how to identify the location of an Ordinary High Water Mark (Occurrence and Distribution of Ordinary High Water Mark (OHWM) Indicators in Non-Perennial Streams in the Western Mountains, Valleys and Coast Region of the United States, August 2014). The document is 26 pages long and only applies to discrete portions scattered throughout the West, none however within the boundaries of Nevada. It demonstrates the complex dependence of a simple definition upon specific environmental conditions, which vary greatly from region to region. This can result in one definition having a number of interpretations even within a single state, which is confusing and counterproductive.

To classify tributaries and other waters as jurisdictional on a per se basis, we suggest that EPA consider a different approach. Instead of trying to determine jurisdiction using categorical definitions of waters, EPA should utilize a more functional methodology.

The core waters, major interstate waterways, are easily determined and accepted as jurisdictional. Other waters considered per se jurisdictional should have a continuous surface connection to a core water, with perennial flow or at least consistent seasonal flow. The Corps has interpreted consistent seasonal flow as flowing at least three months each year. *Deerfield Plantation Phase II-B Property Owners Ass'n, Inc.v. U.S. Army Corps of Engineers*, 501 Fed. Appx. 268, 271 n.1 (4th Cir. 2012). This functional definition would ensure that only waters with significant impacts on core waters would be per se jurisdictional. Other waters could be evaluated on a case-by-case basis.

Waters that are not per se jurisdictional should have a rebuttable presumption that they are non-jurisdictional until proven otherwise. The burden should be on EPA and the Corps to determine jurisdiction in a timely manner after requests for jurisdictional determinations are made, and the agencies should work with states to develop appropriate time frames.

Another current source of confusion is that jurisdictional determinations made by the Corps under section 404 include a disclaimer that the decision applies only to section 404, and not to the many other sections of the CWA. To provide certainty and clarity, waters should either be jurisdictional or not. EPA and the Corps should unify the process so there are no incomplete or conflicting determinations.

A very beneficial tool to add clarity would be a map of Waters of the United States in each state. This would go a long ways toward reducing uncertainty, which is a common goal of all parties, and would ease resistance against the Proposed Rule.

It would improve cooperation and acceptability if states were provided a role in the process as well. State regulators maintain a critical balance between broad federal requirements and specific regional conditions. Without some flexibility in the CWA, one-size-fits-all national requirements can complicate existing regulatory programs by not accounting for local climatic, hydrologic and legal factors. Unnecessary federal jurisdiction brings a host of problems for farmers, land developers and homeowners, since CWA permitting is time consuming, very expensive and legally complicated. Input from states during the jurisdictional determination process would provide valuable information and help avoid misinterpretations, delays and unintended consequences.

V. Categorical Exclusions

We appreciate EPA's attempt to clarify the categorical exclusion of certain types of waters. Of fundamental importance are exclusions for ground water and exemptions for agricultural activities.

The CWA was not intended to be applied to the management of ground water. While we applaud the Proposed Rule's exclusion of ground water, the issue becomes blurred when shallow subsurface hydrologic connections are used to establish jurisdiction between surface waters. This opens the door to interpretation and argument for extension of CWA jurisdiction to groundwater resources.
Ground water should not be part of the CWA, and EPA should follow a more legally defensible path as described in the last section, where a clear surface connection is required rather than a link through ground water.

The State agrees with Western States Water Council (WSWC) that the groundwater exclusion in paragraph (t)(5)(vi) of the Proposed Rule should be amended to state as follows:

"Groundwater, including *but not limited to* groundwater drained through subsurface drainage systems *and shallow subsurface hydrologic connections used to establish jurisdiction between surface waters under this section*" (changes in italics).

The State also agrees with WSWC on agricultural exemptions. While we appreciate the intent of the Interpretive Rule to clarify exemptions, it resulted in confusion and uncertainty about the

scope and applicability of the CWA's agricultural exemptions and their interactions with state water quality programs. Therefore the Proposed Rule should include language stating that:

"Nothing in this section shall be interpreted to limit or otherwise conflict with the exemptions set forth in 33 U.S.C. 1344(f) and in 33 C.F.R. 323.4 and 40 C.F.R. 232.3."

A particular area of confusion is the treatment of ditches. As an example, the Executive Summary of the Proposed Rule states: "Those waters and features that would not be "waters of the United States" are:...Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow." However, section F.2. of the preamble says: "Non-jurisdictional geographic features (e.g. non-wetland swales, ephemeral upland ditches) may still serve as a confined surface hydrologic connection between an adjacent wetland or water and a traditional navigable water, interstate water or territorial sea…In addition, these geographic features may function as "point sources," such that discharges of pollutants to waters through these features could be subject to other CWA authorities (e.g. CWA section 402 and its implementing regulations)." Such conflicting language erodes confidence in EPA's stated exemptions and should be corrected.

VI. Conclusion

Although EPA has, since issuing the Proposed Rule, participated in numerous meetings, webinars and conference calls to try to clarify what the rule actually means and what its impacts might be, the sheer magnitude of effort needed to explain the Proposed Rule is a clear indication that the stated goal of providing clarity has not been achieved. The complexity of issues and potential consequences require much more review and assessment. While we appreciate EPA's efforts and their willingness to listen to input from many parties, discussions to date have not been sufficient to address a rule of this magnitude and significance, particularly without the participation of the Corps.

Considering the significant adverse impacts, legal concerns, lack of clarity and lack of need, the Proposed Rule should not move forward as it stands. Ideally, the State recommends that the Proposed Rule be withdrawn to allow EPA and the Corps to work more closely with states and affected parties to develop a more cooperative and reasonable path forward, consistent with case law and respectful of states' responsibilities and needs to improve the clarity and effectiveness of the Clean Water Act.

In addition, we believe that the following recommendations (as discussed in more detail above) should be incorporated into any future rulemaking, and that doing so would help to provide the clarity EPA, the States and the Stakeholders desire, while ensuring the rule is consistent with current case law:

1. Only tributaries that have a continuous surface connection to core waters and demonstrate perennial or consistent seasonal flow should be considered per se jurisdictional.

2. There should be a rebuttable presumption that all other waters are non-jurisdictional until determined otherwise.

3. Jurisdictional determinations should be completed in a timely manner in accordance with time frames developed with states.

4. EPA and the Corps should unify the jurisdictional determination process to prevent incomplete or conflicting determinations.

5. States should have a meaningful role in the jurisdictional determination process.

6. Specific language should be added to the rule to preserve existing agricultural exemptions.

7. Specific language should be added to the rule to ensure that ground water, including shallow subsurface flow, is clearly exempted from CWA jurisdiction.

8. The treatment of ditches should be clarified to remove contradictions.

We appreciate this opportunity to comment and look forward to working with EPA and the Corps in the future.

THE NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOUCRES

By: Leo M Drozdoff

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Director

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cc: Colleen Cripps, Ph.D., Administrator, DCNR/Division of Environmental Protection