



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission [SEC.nv.gov](http://SEC.nv.gov)

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

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**SEC Hearing to Determine Motion to Dismiss  
Notice Pursuant to NAC 445B.891**

**Date:** October 31, 2017

**To:** Appellant:  
Tahoe Western Asphalt, LLC  
Represented by Mark Simons, Esq.  
Certified Mail: 9171 9690 0935 0012 2754 86

Intervener:  
Nevada Division of Environmental Protection  
Represented by Belinda Suwe, Esq.  
Hand Delivered

**From:** Valerie King, CPM, Executive Secretary

**Subject:** Notice of Hearing to Consider Motion to Dismiss

On October 2, 2017, a request for an appeal hearing was submitted by Tahoe Western Asphalt, LLC (TWA). On October 11, 2017, the Nevada Division of Environmental Protection (NDEP) submitted an amended Petition for Leave to Intervene and a Motion to Dismiss the request for an appeal hearing filed by TWA. On October 23, 2017, the State Environmental Commission (SEC) granted NDEP's Petition for Leave to Intervene. The SEC has therefore scheduled a hearing regarding the NDEP Motion to Dismiss Appeal. The hearing will be held on December 5, 2017, beginning at 10:00 a.m. in Carson City, Nevada at the Legislative Building, Room 4100, located at 401 South Carson Street.

The SEC must determine if it has jurisdiction to hear this appeal pursuant to NRS 445B.340.

The regulation violated, as cited in the Request for an Appeal, Form 3, is NAC 445B.890(2)(d), (e) and (f).

**About the Requested Appeal and Motion to Dismiss:** On October 2, 2017, TWA filed an appeal signed by Lindsay Liddell, a representative attorney.

In summary, TWA reports the grounds for the appeal regarding the penalties assessed by the SEC on September 13, 2017 are:

The final decision was affected by other error of law;  
The final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and  
The final decision was arbitrary or capricious or characterized by abuse of discretion.

On October 23, 2017, NDEP's petition for Leave to Intervene was granted by the SEC. The Motion to Dismiss the Appeal was set for hearing. The substantive issue regarding the Motion to Dismiss the Appeal is that an appeal must be based on a final decision of the Department; whereas, the September 13, 2017 penalty assessments are final decisions of the SEC.

**Hearing Procedure:** Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at:  
<http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>

**Related Information:** Additional information about this appeal is, or will be, available on the SEC website at the following location:  
[http://sec.nv.gov/main/hearing\\_1217.htm](http://sec.nv.gov/main/hearing_1217.htm)

ecc:  
SEC Members  
SEC/DAG  
NDEP Staff