

STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

February 3, 2011

Mark Miller
Area Environmental and Land Services Manager
Frehner Construction Company
3101 E Craig Road
N Las Vegas, NV 89030

**RE: NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NOS. 2292-2295
CLASS II AIR QUALITY OPERATING PERMIT AP1422-0037 COLA 2218 (FIN A0006)**

Dear Mr. Miller:

On January 26, 2011, the Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP) and Frehner Construction Company (Frehner) held an enforcement conference to discuss Frehner's failure to comply with Class II Air Quality Operating Permit AP1422-0037 COLA 2218.

On October 1, 2010, the NDEP-BAPC conducted an on-site inspection of the Frehner operated aggregate processing facility and hot-mix asphalt plant 7 miles North of McGill in White Pine County under Class II General Air Quality Operating Permit AP1422-0037, COLA #2218. During the inspection a Method 9 VEO of the emissions from the wet scrubber on the HMA plant was conducted. Opacity was determined to be 47.5%. It was also discovered that required records for the HMA plant were incomplete. A thorough review of records indicated that crushing and screening records were also incomplete and there were several days of hourly operation limit exceedances on the HMA plant. There was also a failure to report the excess emission to the NDEP-BAPC. Failure to comply with a permit requirement represents an air quality violation under **NRS 445B.275 Violations: Acts Constituting; Notice.**

The attached Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2292 through 2295 alleges that Frehner is in violation of **NRS 445B.470 Prohibited Acts; penalty; establishment of violation; request for prosecution.** 1. A person shall not knowingly: (a) Violate any applicable provision, the terms or conditions of any permit or any provision for the filing of information; required pursuant to the provisions of NRS 445B.100 to 445B.450, inclusive, or 445B.470 to 445B.640, inclusive, or any regulation adopted pursuant to those provisions. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(a) Violate any applicable provision, the terms or conditions of any permit or any provision for the filing of information.



Frehner Construction

February 3, 2011

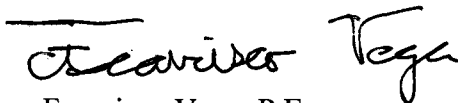
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NOAV Nos. 2292 through 2295 constitute major violations under **NAC 445B.281 Violations: Classification; administrative fines**. This is the eighth NOAV issued to Frehner in over 60 months. As was discussed during the January 26, 2011 enforcement conference, NOAV No. 2293 and 2295 shall be issued as warning violations.

An appeal of NOAV Nos. 2292 through 2295 may be requested pursuant to **Nevada Revised Statutes (NRS) 445B.360** and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within 10 days of receipt of this notice, pursuant to **NRS 445B.340**. Appeals are processed through John Walker, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mr. Walker can be reached at 775-687-9308, or by fax at 775-687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions about the alleged violations, the penalty assessment process, or the appeal process please call me at (775) 687-9343.

Sincerely,



Francisco Vega, P.E.
Supervisor, Compliance and Enforcement Branch
Bureau of Air Pollution Control

FV/rf

Enclosures: 1. Notice of Alleged Air Quality Violation and Order Nos. 2292-2295
2. SEC Appeal Form #3

cc (w/enc. 1 and 2): John Walker, SEC
Files (A0035)

Route to (w/enc. 1 and 2): Michael Elges, NDEP
Jeff Denison, NDEP

Certified Mail #: 7010 0290 0001 6793 5686

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

NO. 2292

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Mark Miller

Company Name: Frehner Construction Company

Address: 3101 E Craig Road, N Las Vegas, NV 89030

Permit Number: AP1422-0037

FIN: A0035

Site of Alleged Violation: COLA #2218 7 miles North of McGill

Date of Observation: 10-1-2010

Arrival: 12:15 PM

Departure: 2:00 PM

Ambient Temperature: 80

°F

Clear:

Cloudy: x

Rain:

Snow:

Wind Speed: 5

knts

Wind Direction:

out of the South

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

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

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit (emissions exceedance)

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

Failure to comply with the opacity limit for emissions from the asphalt plant's drum mixer wet scrubber stack.

Evidence:

Frehner Construction Company (Frehner) operates an aggregate processing facility and hot-mix asphalt plant 7 miles North of McGill in White Pine County under Class II General Air Quality Operating Permit AP1422-0037, COLA #2218. COLA #2218 was issued to Frehner on May 17, 2010.

On October 1, 2010 a Nevada Division of Environmental Protection, Bureau of Air Pollution Control (NDEP-BAPC) official driving on US HWY 93 noticed large clouds of smoke and/or "dust" coming from the plant. The official arrived on site at approximately 12:15 pm and observed dense clouds of smoke and dust emanating from the asphalt plant's; drum mixers wet scrubber stack (System 27). The official conducted a Method 9 VEO of the emissions from the wet scrubber and found opacity to be 47.5%. While on-site the official observed emissions from the wet scrubber stack clean up and come down to an opacity ranging from 5% to 15%. The duration of the observed excess emissions from the wet scrubber stack was a minimum of 30 minutes.

It should be noted that Frehner did have a person, Lee Radford, on-site who was VE certified through Carl Koontz. While the NDEP official was conducting the initial VE, the official was approached by Mr. Radford and asked what was going on. The official responded that smoke was observed coming from the plant as the official was driving down US HWY 93 and that a Method 9 VEO was being conducted to determine opacity. At no time did Mr. Radford conduct a Method 9 VEO of the excess emission. During conversation with Mr. Radford, the official was informed that the wet scrubber had several prior excess emissions. None of these excess emissions have been reported to the NDEP-BAPC.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2292

This failure to operate within permitted emission limits constitutes a major emission violation with a high volume of release. Along with related Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2293 - 2295, NOAV No.2292 represents Frehner's eighth air quality violation within the last 60 months.

ORDER

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

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

To take corrective action: Operate all equipment within specified permitted emission limits.

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

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

_____ This notice is a warning.

Signature Francisco Vega
Issued by: Francisco Vega
Supervisor
Compliance and Enforcement Branch

Phone: 775-687-9343 Date: February 3, 2011

FV/rc
Certified Mail #: 7010 0290 0001 6793 5686

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

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

NO. 2293

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Mark Miller

Company Name: Frehner Construction Company

Address: 3101 E Craig Road, N Las Vegas, NV 89030

Permit Number: AP1422-0037

FIN: A0035

Site of Alleged Violation: COLA #2218 7 miles North of McGill

Date of Observation: 10-1-2010 **Arrival:** 12:15 PM **Departure:** 2:00 PM

Ambient Temperature: 80 °F **Clear:** **Cloudy:** X **Rain:** **Snow:**

Wind Speed: 5 knts **Wind Direction:** out of the South

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

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

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit.

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

Failure to report excess emissions in a timely manner (within 15 days).

Evidence:

Frehner Construction Company (Frehner) operates an aggregate processing facility and hot-mix asphalt plant 7 miles North of McGill in White Pine County under Class II General Air Quality Operating Permit AP1422-0037, COLA #2218. COLA #2218 was issued to Frehner on May 17, 2010.

On October 1, 2010 a Nevada Division of Environmental Protection - Bureau of Air Pollution Control (NDEP-BAPC) official driving on US HWY 93 noticed large clouds of smoke and/or "dust" coming from the plant. The official arrived on site at approximately 12:15 pm and observed dense clouds of smoke and dust emanating from the asphalt plant drum mixer's wet scrubber stack (System 27). The official conducted a Method 9 VEO of the emissions from the wet scrubber and found opacity to be 47.5%. While on-site the official observed emissions from the wet scrubber stack clean up and come down to an opacity ranging from 5% to 15%. Duration of the observed excess emissions from the wet scrubber stack was a minimum of 30 minutes. This excess emission was not reported to the NDEP-BAPC.

Failure to report an excess emission within 15 days constitutes a major violation. Along with related Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2292, 2294 and 2295, NOAV No.2293 represents Frehner's eighth air quality violation within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2293

ORDER

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

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

To take corrective action: Report all excess emission within 15 days of discovery.

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

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

This notice is a warning.

Signature Francisco Vega
Issued by: Francisco Vega
Supervisor
Compliance and Enforcement Branch

Phone: 775-687-9343 Date: February 3, 2011

FV/rc
Certified Mail #: 7010 0290 0001 6793 5686

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

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

NO. 2294

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Mark Miller

Company Name: Frehner Construction Company

Address: 3101 E Craig Road, N Las Vegas, NV 89030

Permit Number: AP1422-0037

FIN: A0035

Site of Alleged Violation: COLA #2218 7 miles North of McGill

Date of Observation: 11/24/2010

Arrival: N/A

Departure: N/A

Ambient Temperature: N/A

°F

Clear:

Cloudy:

Rain:

Snow:

Wind Speed:

N/A

Mph 8

Wind Direction:

N/A

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

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

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit (throughput exceedance).

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

Exceedance of permitted daily hours of operation for the Hot Mix Asphalt plant.

Evidence:

Frehner Construction Company (Frehner) operates an aggregate processing facility and hot-mix asphalt plant 7 miles North of McGill in White Pine County under Class II General Air Quality Operating Permit AP1422-0037, COLA #2218. COLA #2218 was issued to Frehner on May 17, 2010.

On October 1, 2010 a Nevada Division of Environmental Protection - Bureau of Air Pollution Control (NDEP-BAPC) official driving on US HWY 93 noticed large clouds of smoke and/or "dust" coming from the plant. The official arrived on site at approximately 12:15 pm and observed dense clouds of smoke and dust emanating from the asphalt plant drum mixer's wet scrubber stack (System 27). This prompted a compliance inspection.

During the inspection, records were reviewed. Review of the records indicated that there were several days of operation where the hot-mix asphalt plant exceeded the permitted hours of operation. It was also observed that several of the required daily contemporaneous logs were incomplete. It was explained that even though some of the contemporaneous logs were incomplete, the production data was still being input into an Excel spreadsheet that was maintained daily. This prompted a verbal records request for the Excel spreadsheet from the NDEP-BAPC official. Records were not received. This prompted a 2nd and 3rd verbal records request. After the 3rd records request, it was requested by Frehner that a written records request be submitted. A written request was sent on November 2, 2010 asking for all records, including throughputs, hours of operation, and contemporaneous daily logs for all systems for the entirety of COLA 2218 operations. Records were received on November 22, 2010.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2294

Review of the submitted records showed that there were 12 days of operation where the permitted hours of operation were exceeded on the Hot Mix Asphalt Plant.

These exceedances constitute 12 major air quality violations. Along with related Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2292, 2293 and 2295, NOAV No.2294 represents Frehner's eighth air quality violation within the last 60 months.

ORDER

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

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

To take corrective action: Operate all equipment with in specified operational limitations. _____

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

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

_____ This notice is a warning.

Signature Francisco Vega
Issued by: Francisco Vega
Supervisor
Compliance and Enforcement Branch

Phone: 775-687-9343 Date: February 3, 2011

FV/rc
Certified Mail #: 7010 0290 0001 6793 5686

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

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

NO. 2295

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Mark Miller

Company Name: Frehner Construction Company

Address: 3101 E Craig Road, N Las Vegas, NV 89030

Permit Number: AP1422-0037 **FIN:** A0035

Site of Alleged Violation: COLA #2218 7 miles North of McGill

Date of Observation: 11/24/2010 **Arrival:** N/A **Departure:** N/A

Ambient Temperature: N/A °F **Clear:** **Cloudy:** **Rain:** **Snow:**

Wind Speed: N/A mph **Wind Direction:** N/A

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

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

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit

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

Failure to maintain required monitoring records.

Evidence:

Frehner Construction Company (Frehner) operates an aggregate processing facility and hot-mix asphalt plant 7 miles North of McGill in White Pine County under Class II General Air Quality Operating Permit AP1422-0037, COLA #2218. COLA #2218 was issued to Frehner on May 17, 2010.

On October 1, 2010 a Nevada Division of Environmental Protection - Bureau of Air Pollution Control (NDEP-BAPC) official driving on US HWY 93 noticed large clouds of smoke and/or "dust" coming from the plant. The official arrived on site at approximately 12:15 pm and observed dense clouds of smoke and dust emanating from the asphalt plant drum mixer's wet scrubber stack (System 27). This prompted a compliance inspection.

During the inspection, records were reviewed. Review of the records indicated that there were several days of operation where the hot-mix asphalt plant exceeded the permitted hours of operation. It was also observed that several of the required daily contemporaneous logs were incomplete. It was explained that even though some of the contemporaneous logs were incomplete, the production data was still being input into an Excel spreadsheet that was maintained daily. This prompted a verbal records request for the Excel spreadsheet from the NDEP-BAPC official. Records were not received. This prompted a 2nd and 3rd verbal records request. After the 3rd records request, it was requested by Frehner that a written records request be submitted. A written request was sent on November 2, 2010 asking for all records, including throughputs, hours of operation, and contemporaneous daily logs for all systems for the entirety of COLA 2218 operations. Records were received on November 22, 2010.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER NO. 2295

Thorough review of the submitted records found that there was now a daily contemporaneous log for each day of operation. This contradicts what was observed in the field. It was also found that for the Crushing and Screening operation, records for throughput and hours of operation had not been kept for permitted Systems 03 through System 16 (PF1.005 through PF1.030). This entails 26 emission units. Records for Systems 01 and 02 indicate that Crushing and Screening operated for 80 days.

Failure to comply with the recordkeeping requirements of COLA #2218 constitutes a major violation. Along with related Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2292 - 2294, NOAV No.2295 represents Frehner's eighth air quality violation within the last 60 months.

ORDER

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

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

To take corrective action: Comply with all monitoring recording keeping requirements specified in future air quality operating permits.

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

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

This notice is a warning.

Signature Francisco Vega
Issued by: Francisco Vega
Supervisor
Compliance and Enforcement Branch

Phone: 775-687-9343 Date: February 3, 2011

FV/rc
Certified Mail #: 7010 0290 0001 6793 5686

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

FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING
BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

1. Name, address, telephone number, and signature of applicant:
Name: _____
Address: _____
Telephone: _____
Signature: _____
Representative Capacity (if applicable): _____
2. Specify type of applicant: Individual, Partnership, Corporation, or Other: _____
3. Other person or persons authorized to receive service of notice: _____
4. Complete description of the business or activity and the location of the activity involved in the request: _____

5. Nature of the appeal and grounds thereof: _____

6. Section or sections of the State Air Quality Regulations, Water Pollution Control Regulations, Hazardous Waste Regulations, Solid Waste Management Regulations, or NRS section involved in the appeal: _____

7. Approximate time in hours and minutes necessary for delivery of oral testimony and reading of prepared statements as admissible evidence to be entered in the record: _____

Date of Request _____

Send Form To: John Walker, State Environmental Commission, 901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249 (Fax 775-687-5856)