

1 BYRON THOMAS, ESQ.
2 NEVADA BAR NO.
3 3275 S Jones Blvd
4 Las Vegas, NV 89146
5 702 747-3103
6 Attorney for Plaintiff

7 **BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION**

8 In the Matter of:

9 ABC RECYCLING LLCS APPEAL OF NDEP'S
10 FEBRUARY 6, 2020 DECISION TO REVOKE
11 THE LATHROP MILL RECLAMATION
12 PERMIT #0171; AND FORFEIT OF THE
13 RECLAMATION SURETY CASH DEPOSIT

14 **OPPOSITION TO MOTION TO
15 SUMMARY JUDGMENT**

16 **COMES NOW ABC RECYCLING, LLC'S** by and through its attorney of record
17 Law Offices of Byron Thomas and files this Opposition to Motion for Summary Judgment.

18 **POINTS AND AUTHORITIES**

19 The Nevada Department of Environmental Protection (hereinafter the "State" or
20 "NDEP") has filed a motion for summary judgment (hereinafter the "Motion"). The State
21 contends that the it is entitled to summary judgment because ABC Recycling (hereinafter "ABC")
22 has not paid the annual fee for mining. However, this is simply a pretext for the State
23 unreasonably refusing to accept ABC's reclamation plan.

24 **RELEVANT FACTS**

25 The State is using the fee issue as a blatant attempt hide the unreasonable withholding of
26 the approval of ABC's reclamation plan. See the Declaration of Robert Ford attached hereto as
27 Exhibit "A." The State originally set the reclamation bond at \$1,260,000, However the actual
28 reclamation costs are more than triple the bond. It is believed that Hillcrest spent approximately
\$3,400,000 attempting to reclaim the property. ABC Recycling has spent approximately
\$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals.

In addition, there may be the need for even more expenditures on cleanup. There is also a
settling pond of approximately 200 acres located on the property. We believe that this settling

1 pond contains contaminants. At this time no formal estimate has been done, but based on the past
2 contamination costs we estimate that it will take at least \$1,200,000 to clean up.

3 We also cannot forget that American Borate is the cause of all these problems. However,
4 American Borate is not being required to take responsibility for its actions. Instead NDEP is
5 pursuing actions against ABC. The only party that is currently trying to remedy the problem.

6 ABC intends on continuing to reclaim the property. ABC has presented a plan to reclaim
7 the land. See Exhibit B. The plan reasonably proposes to use green waste to reclaim the
8 property. NDEP has unreasonably withholding approval, and this is the real reason behind
9 revocation of the permit. The State has not provided any technical or written reason as to why the
10 reclamation plan is not sufficient.

12 ARGUMENT

13 A. The State has Presented a Pretextual Argument to Distract from its Unreasonable 14 Decision to Withhold Approval of ABC's Plan of Reclamation

15 The standard for summary judgment is as follows:

16 When deciding a summary judgment motion, all evidence "must be viewed in a
17 light most favorable to the nonmoving party." Id. General allegations and
18 conclusory statements do not create genuine issues of fact. Id. at 731, 121 P.3d at
1030-31.

19 Barber v. D. 2801 Westwood, Inc., 437 P.3d 1053 (Nev. 2019). "In determining whether
20 summary judgment is proper, the nonmoving party is entitled to have the evidence and all
21 reasonable inferences accepted as true." Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774
22 P.2d 432, 433 (1989); see also Scialabba v. Brandise Const. Co., 112 Nev. 965, 968, 921 P.2d
23 928, 930 (1996) In addition, district court cannot make findings concerning the credibility of
24 witnesses or weight of evidence in order to resolve a motion for summary judgment. Borgerson
25 v. Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001)

26 The State's reason for revoking ABC's permit is simply a pretext to cover for its arbitrary
27 and capricious behavior in unreasonably withholding approval of ABC's plan of reclamation.
28 See SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987)/ ABC has presented a

1 reasonable and valid reclamation plan. Yet, the State continues to unreasonably withheld
2 approval, and it is just using the fee dispute as an excuse. The State states that ABC has not
3 attempted to pay the fees. However, it makes no sense for ABC to pay the fees while the State
4 continues to unreasonably without hold approval of the reclamation plan. ABC would be happy
5 to pay the fees if the State was not acting so arbitrarily.

6 ABC has presented several reclamation plans. The State has not provided a formal written
7 explanation as to why those plans are insufficient. The State has presented no technical or written
8 explanation as to why ABC's reclamation plan is not sufficient.

9
10 B. ABC is entitled to additional time to challenge the Motion for Summary Judgment.

11 However NRCP 56(d), formerly NRCP 56(f) allows a party more time to gather evidence
12 to oppose a summary judgment motion if the party needs additional time to gather evidence to
13 challenge the motion for summary judgment.

14 The Nevada Supreme Court has interpreted Rule 56(f) as follows:

15
16 NRCP 56(f) permits a district court to grant a continuance when a party opposing a
17 motion for summary judgment is unable to marshal *118 facts in support of its
18 opposition.² A district court's decision to refuse such a continuance is reviewed for
19 abuse of discretion.³ Furthermore, a motion for a continuance under NRCP 56(f)
20 is appropriate only when the movant expresses how further discovery will lead to
21 the creation of a genuine issue of material fact.⁴ In *Halimi v. Blacketer*, this court
22 concluded that a district court had abused its discretion when it denied an NRCP
23 56(f) motion for a continuance and granted summary judgment in a case where the
24 complaint had been filed only a year before summary judgment was granted.⁵ This
25 court noted that summary judgment is improper when a party seeks additional time
26 to conduct discovery to compile facts to oppose the motion.⁶ Furthermore, this
27 court held that when no dilatory motive was shown, it was an abuse of discretion
28 to refuse a request for further discovery at such an early stage in the proceedings.⁷

24 ///

25 ///

26 ///

1 Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 117–18, 110 P.3d 59, 62 (2005).

2 ABC does not make the request for a dilatory purpose. Rather, the unusual occurrence of a global
3 pandemic has effected the ability of ABC to gather the needed discovery. See the Declaration of
4 Byron Thomas attached as Exhibit “C.” The added time will allow ABC to demonstrate that the
5 State is engaging in a charade and is in reality unreasonably withholding permission of approval.

6 Dated this 24th April of 2020

7
8 LAW OFFICES OF BYRON THOMAS

9 /s/ BYRON E. THOMAS

10 _____
11 BYRON THOMAS
12 Nevada Bar No. 8906
13 3275 S. Jones Blvd. Ste. 104
14 Las Vegas, Nevada 89146
15 byronthomaslaw@gmail.com
16 Phone: (702) 747-3103
17 Attorney for Plaintiffs
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EXHIBIT “A”

BYRON E. THOMAS, ESQ. (NBN 8906)
E-mail: byronthomaslaw@gmail.com
LAW OFFICES OF BYRON THOMAS
3275 S. Jones Blvd, Ste 104
Las Vegas, Nevada 89146
Telephone: 702 747-3103
Attorneys for Defendants

**BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL
COMMISSION**

In the Matter of:

ABC RECYCLING LLCS APPEAL OF NDEP'S
FEBRUARY 6, 2020 DECISION TO REVOKE
THE LATHROP MILL RECLAMATION
PERMIT #0171; AND FORFEIT OF THE
RECLAMATION SURETY CASH DEPOSIT

**DECLARATION OF ROBERT FORD IN
SUPPORT OF OPPOSITION TO MOTION
TO SUMMARY JUDGMENT**

I Robert Ford am over the age of 18, and I am competent to make this declaration (the "Declaration"). I make this Declaration based on personal knowledge.

I am the managing member of ABC Recycling, LLC. I have reviewed the Motion for Summary Judgment and the Opposition to the Motion to Summary Judgment. Because of my position as managing member I have personal knowledge of the documents attached as Exhibits to the Opposition. The documents were created at near the time of the event and they were created in the ordinary course of business.

The State is using the fee issue as a blatant attempt hide the unreasonable withholding the approval of ABC's reclamation plan. The State originally set the reclamation bond at \$1,260,000, However the actual reclamation costs is more than triple the bond. It is believed that Hillcrest spent approximately \$3,400,000 attempting to

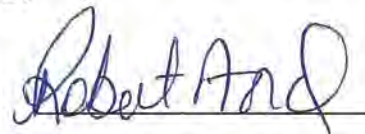
reclaim the property. ABC Recycling has spent approximately \$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals.

In addition, there may be the need for even more expenditures on cleanup. There is also a settling pond of approximately 200 acres located on the property. We believe that this settling pond contains contaminants. At this time no formal estimate has been done, but based on the past contamination costs we estimate that it will take at least \$1,200,000 to clean up.

We also cannot forget that American Borate is the cause of all these problems. However, American Borate is not being required to take responsibility for its actions. Instead NDEP is pursuing actions against ABC. The only party that is currently trying to remedy the problem.

ABC intends on continuing to reclaim the property. ABC has presented a plan to reclaim the land. See Exhibit B. The plan reasonably proposes to use green waste to reclaim the property. NDEP has unreasonably withholding approval, and this is the real reason behind revocation of the permit. The State has not provided any technical or written reason as to why the reclamation plan is not sufficient.

Executed on this 24 day of April 2020



ROBERT FORD

EXHIBIT “B”

Lathrop Mill Remediation Facility

Address:

1995 Diaz Road
Amargosa Valley, NV 8920

Contact: Robert Ford
(702) 715-4347

Project Location:

Portion of Section 36, Township 17
South, Range 49 East and Portion of
Section 1, Township 18 South, Range 49
East: Mount Diablo Baseline &
Meridian, Nye County, Nevada

APN#: 019-421-05
019-421-09
019-381-26

Project Description

Lathrop Mill Remediation Facility will receive approximately 100,000 cubic yards(cy)/year including:

- 25,000 cy green waste (for improving organic matter content and microbiology of soil)
- 15,000 cy clean dimensional lumber (for improving organic matter content of soil)
- 25,000 cy manure (for improving nutrient balance, organic matter content and microbiology of soil)
- 35,000 cy sheetrock (for gypsum to lower pH and reduce salinity)

Material will be ground, screened, and land applied at agronomic rates suitable for remediating and revegetating the site. It will not require composting. Agronomic rates will be determined and adjusted through lab analysis and results of test plots and growth trials. Material received will not be composted nor sold, and is entirely for remediating the soil and revegetating the site. Received volumes may be adjusted as necessary to achieve the most appropriate agronomic rate.

Equipment utilized:

- CAT 988 B loader
- Case 570 XLT loader
- CAT 235 excavator with thumb
- Protogrind 1200 horizontal grinder
- Ford water truck
- Trommel screen
- Tractor with disc

The facility will employ one manager, one heavy equipment operator, one truck operator and one laborer.

Monitoring, sampling and testing programs will be implemented to ensure all products meet specifications for remediating and revegetating the property.

Provisions for fire prevention and control:

Unprocessed and ground yard trimmings in storage at the receiving area will be kept in piles less than 25' in height prior to grinding.

Piles will be inspected for signs of combustion and excessively high temperatures. In case of smoke, smoldering, or fire, depending on the intensity, the operator may use the FEL to break apart the pile and douse with the water truck.

Fire extinguishers will be available for employees to use on equipment. If a fire at the facility grows beyond incipient stage, 911 will be called for assistance.

Fire lanes (buffers) around the perimeter of piles will be kept clear of flammable or combustible material or vegetation and maintained for adequate emergency vehicle access.

Provisions for odor prevention and control:

Odors will be prevented by ensuring feedstock is kept aerobic, ground and applied at agronomic rates.

Provisions for the control of runoff and runoff:

Berms will be built around active receiving areas to prevent runoff and runoff. Materials received will not have a high moisture content and the arid climate will prevent excess accumulation of standing water. In the unlikely case water pools or ponds as a result of active substrate or extreme rain events, it can be pumped back onto dryer materials to absorb it.

Provisions for litter prevention and control:

Incoming material will be confined to as small an area as practicable. Physical contaminants will be removed by hand stored in a sealed container. The facility will be inspected and cleaned to collect any scattered lightweight debris.

Contingency plan to be taken in the event of unforeseen circumstances that may occur at the facility. The plan provides for an organized and coordinated course of action to be taken, and addresses:

(1) A fire at the facility:

Operator will use its own fire extinguishers and water truck to manage the fire. The fire department will be called if control is not possible.

(2) A release of hazardous or toxic materials:

Operator will isolate and contain materials, and arrange for proper disposal. If release cannot be contained the Nye County Southern Hazmat Team will be contacted.

(3) Facility shutdown for any reason:

Operator will stop receiving feedstock materials, ensure all materials onsite are in proper piles and not odorous or on fire, and site will be secured by fences and berms.

Provisions for proper disposal of by-products:

Operator will have 40-cubic yard roll-off boxes onsite and will remove any contaminants for proper disposal.

Project Team:

Rich Flammer, Project Manager, organic materials expert, Hidden Resources
Wayne Williams, Ph.D., Plant Pathologist/Agricultural Advisor, Hidden Resources
Garn Wallace, Ph.D., Soil Scientist, Wallace Laboratories

•Proposed ABC Recycling Industries Re-veg plan

ABC Recycling Industries
Re-veg Plan
1995 Diaz Drive, Amargosa, NV

- Property owner/Applicant: Robert Ford, ABC Recycling Industries
- Site History: Reclaimed Borate and clay mine under Bureau of Mine Reclamation, NDEP

Re-veg PlanFacts:

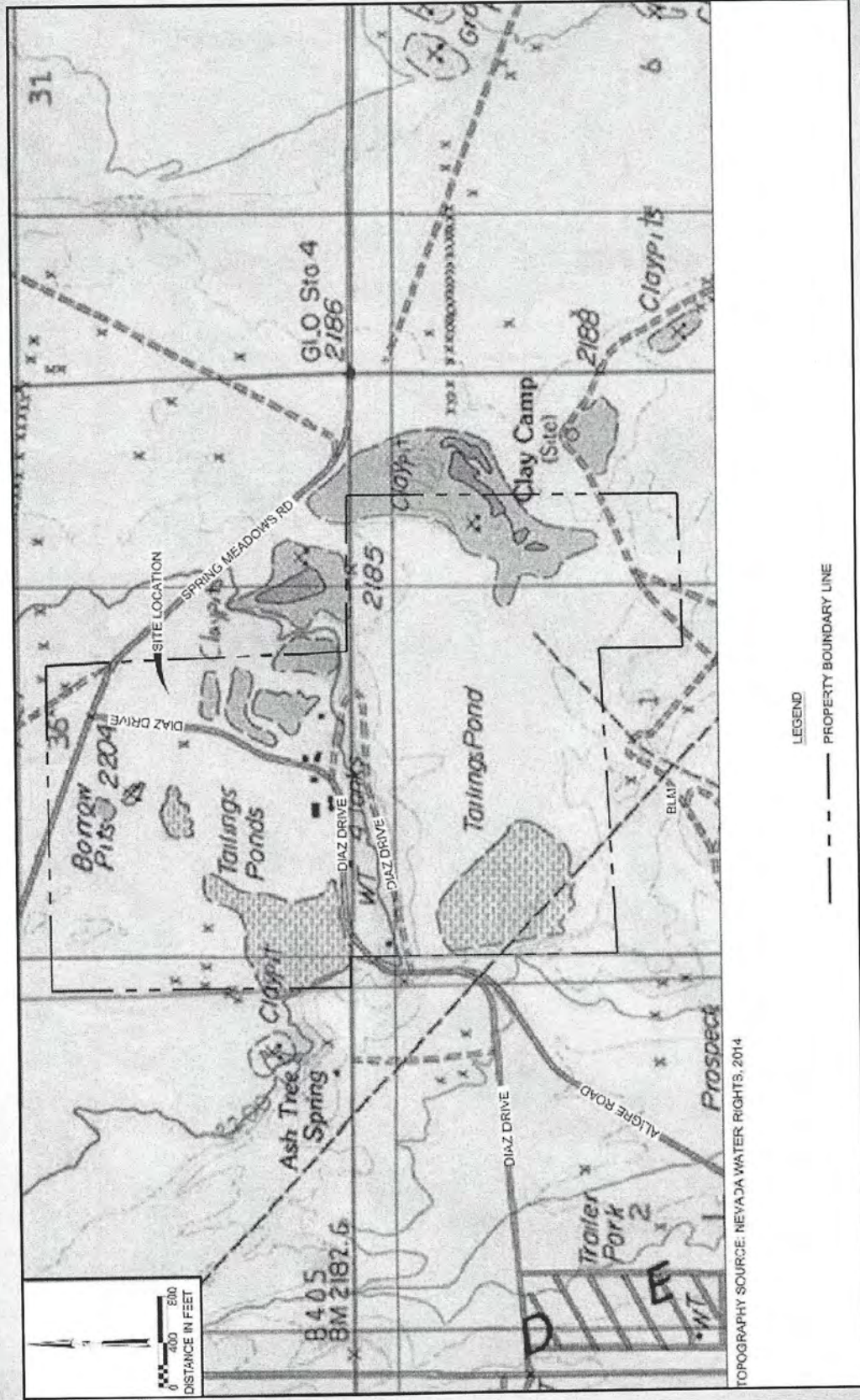
- 372 Acres Total Site.
- 206 Acres Proposed Class III Landfill (Over Mine-Tailing Pond areas).
- 166 Acres setbacks - 100' from Property Line, stormwater ponds, Borrow Pits.
- Phase I Landfill/South Area - 3' high and to positive 1% drainage.
- Phase II Landfill/North Area - 3' high and to positive 1% drainage.
- Approximately 1.5 million cubic yards capacity or about 10 years of life.
- 12 to 20 Trucks per day.
- Borate mine tailings ponds have contaminated local groundwater with arsenic, acids, sulfates, and chloride.
- Landfill will reclaim mine area and assure groundwater monitoring and containment.

REVEG- SITE

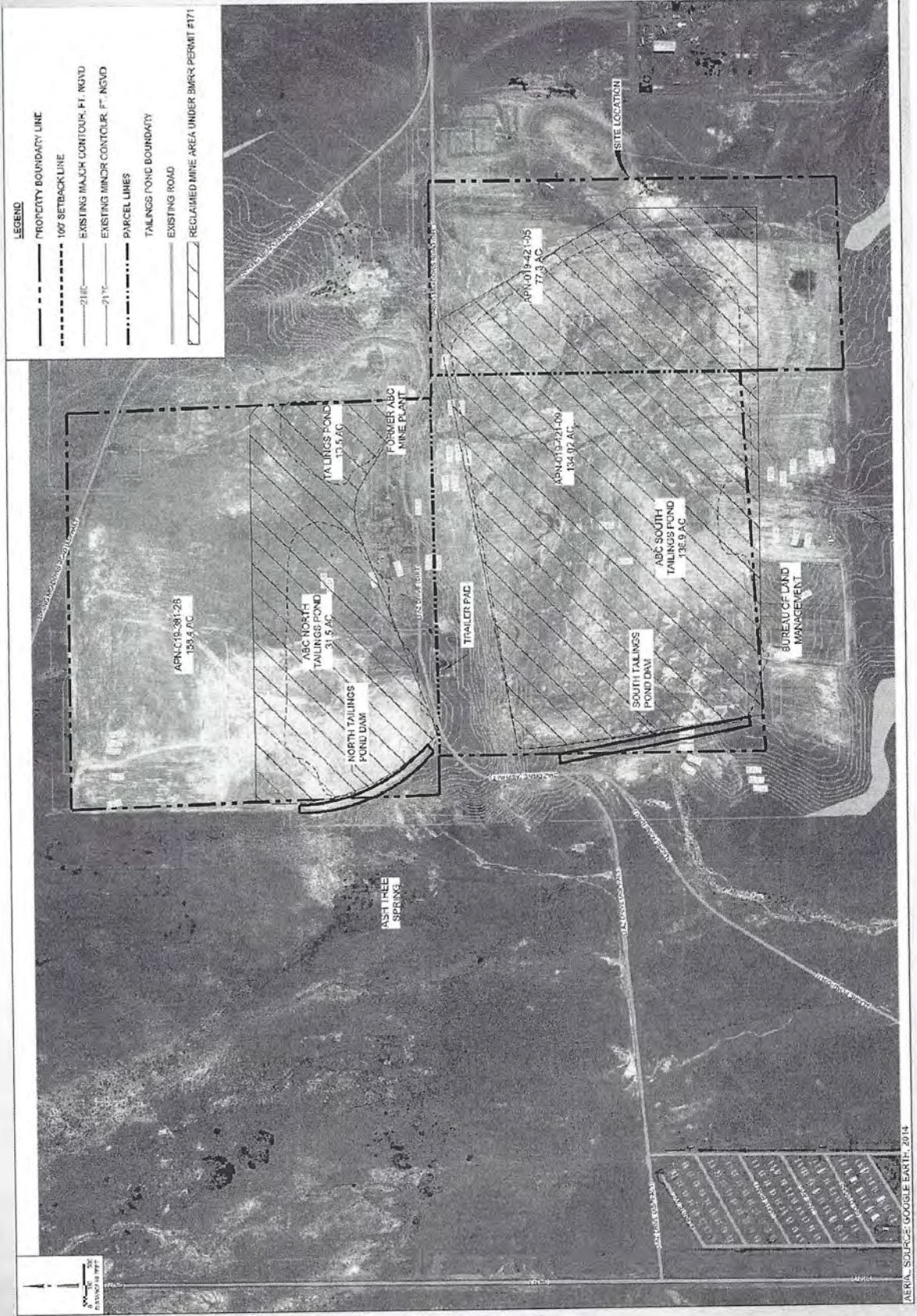
Required Control Plans For Re-veg Operation:

- REVEG –PLAN
 - Screening at Gate, Customers, testing, spotters at dump area.
- Operating Plan
 - Training
 - Fire Control
 - Allowable Materials
- Recycling Plan
 - Green waste/Compost
 - Vector Control
 - Engineering And Safety Plans
 - Dust, noise, and odor controls

Location Map



Existing Condition



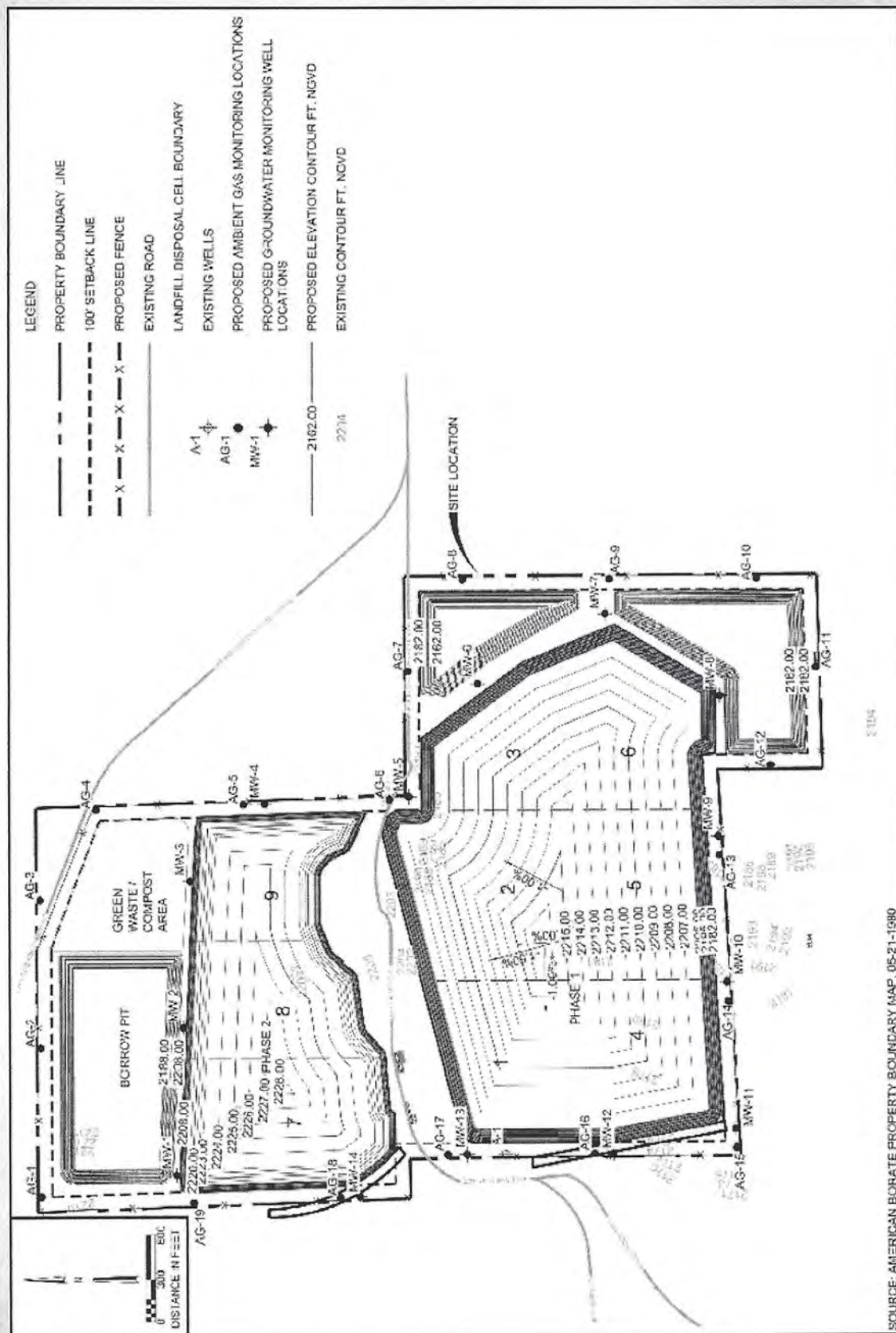
Environmental Screening

- Soil samples collected at aboveground storage tank (AST) and tailings ponds.
- Four samples collected at AST location. All showed diesel range organics and total petroleum hydrocarbons in excess of 50,000 mg/kg.
- Nineteen samples collected in tailings ponds. All showed elevated levels of arsenic and other metals.
- A Phase II Environmental Site Assessment (ESA) is recommended for the site.

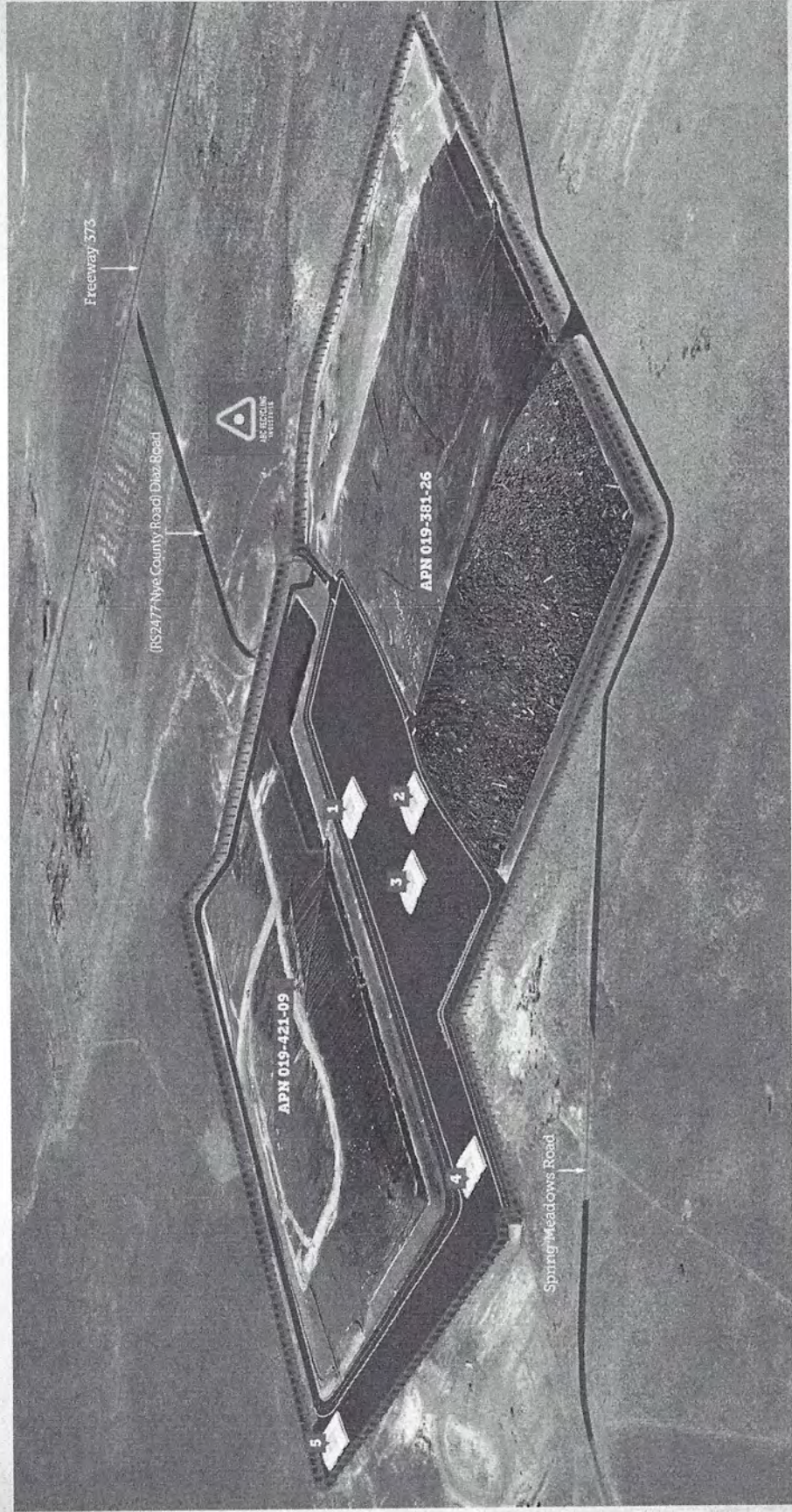
Permit 0171 Acceptable Materials

- Grinded Construction and Demolition woods materialsin which will help in soil enhancement .
- Cow manure
- Shredded papers pulp /wall board
- Organics/in-organics
- Trees , stumps , plam trees / grinding
- Grass clipping
- Wood chips /grinding
- Gypsum materials
- Perite , zeolites
- Green Waste materials





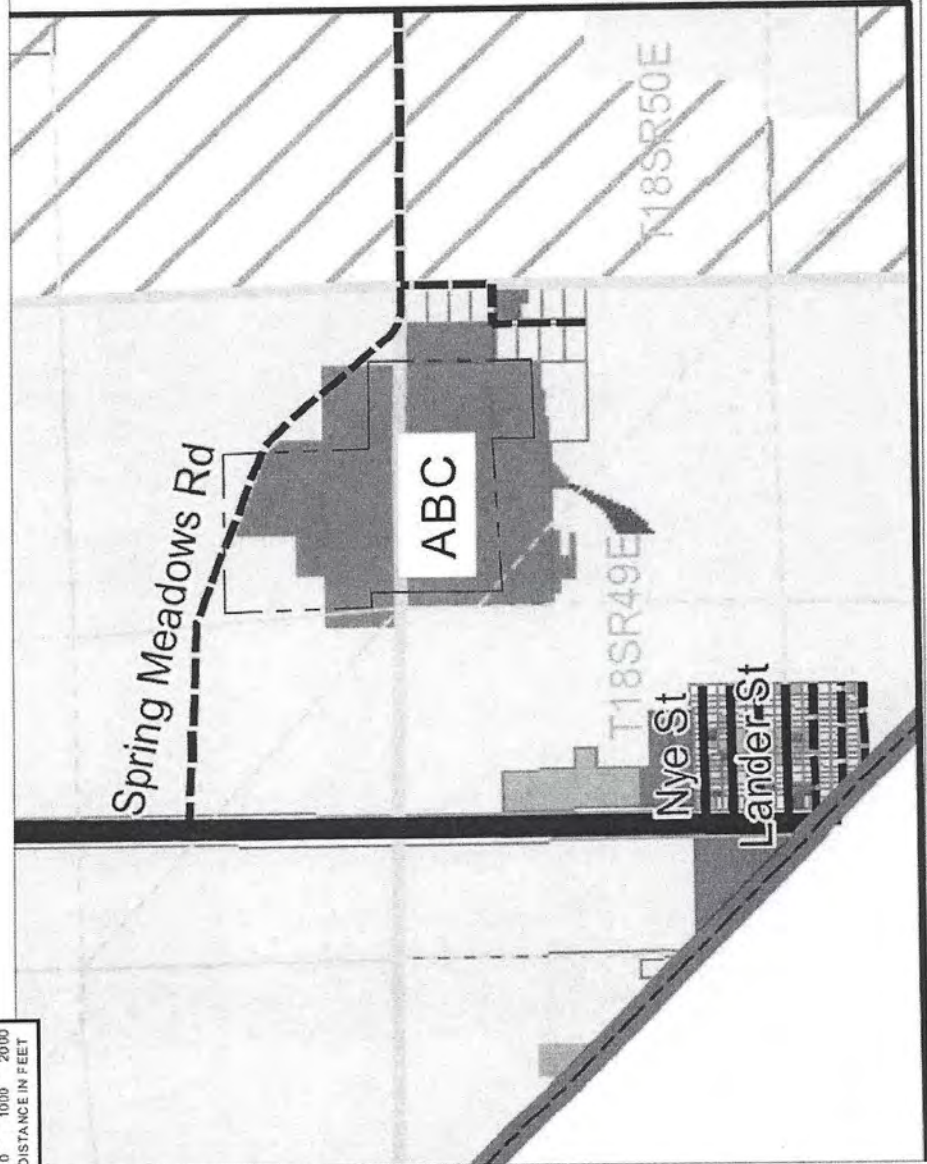
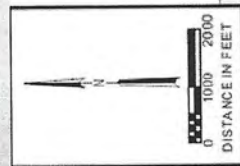
Re-veg site



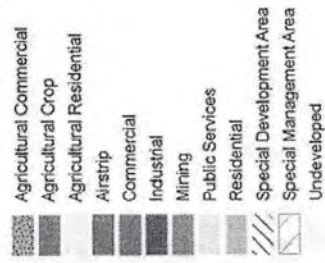
Amargosa Valley Area (AVA) Plan

- Current land use for ABC site is “mining.”
- The site is not shown as a contaminant source to public water supply systems in the AVA Plan.
- Future land use of ABC site is “Rural Industrial” or RUI.
- The Project is consistent with the AVA Plan.

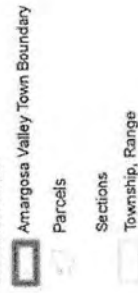
Current Land Use



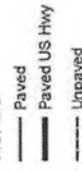
EXISTING LAND USE DESIGNATION



BOUNDARIES



ROADS

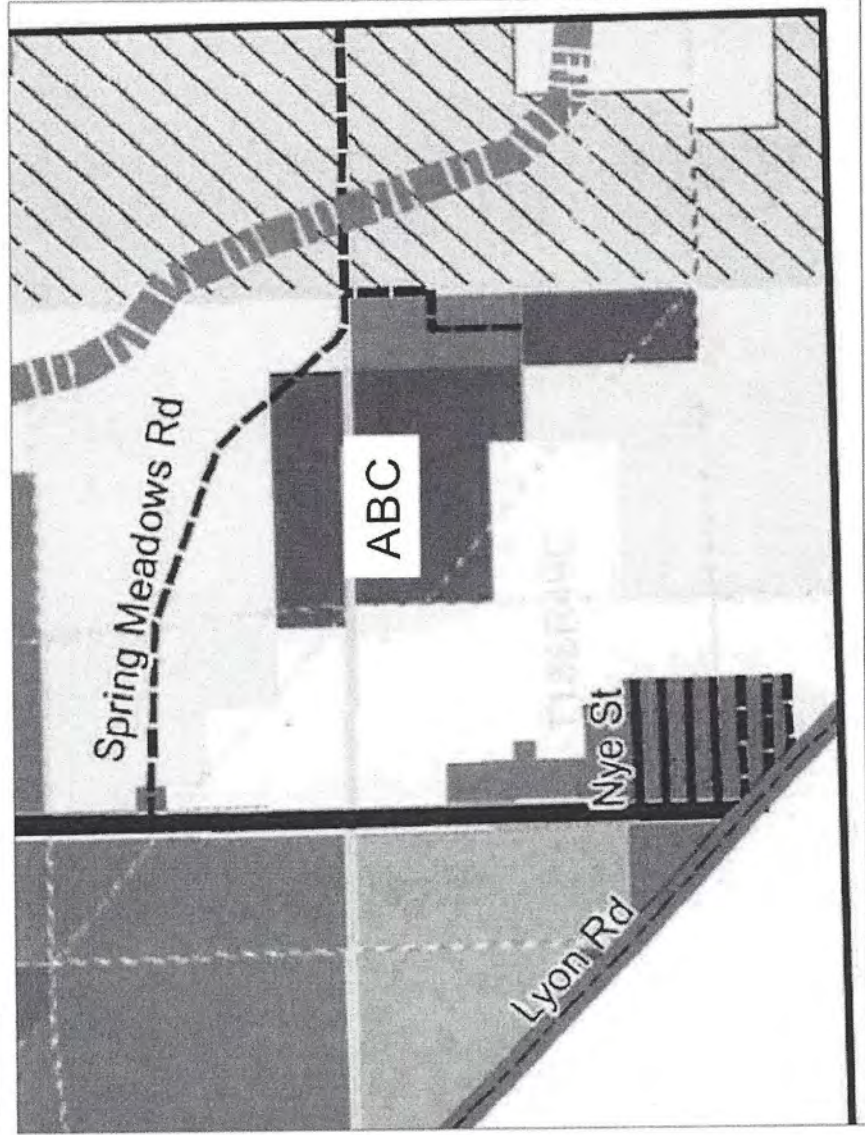
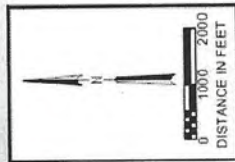


SOURCES:
Existing Land Use compiled from inputs provided by the Anargosa Valley Area Plan Committee field verifications, Nye County Assessor's database, and photo-interpretation of Nye County 2007 digital orthophotography. Parcels, road centerlines, Anargosa Valley Town boundary, and Township, Range, and Section boundaries from the Nye County GIS Repository (2008).

Amargosa Valley Area Plan

- RUI Purpose: "...develop businesses serving mining, or mining related activities."
- Objective: "Establish land for Industrial Development ... mining related and green industries that will provide expanded economic opportunities for the community without impairment to the limited natural resource, particularly water."
- Proposed ABC recycling facility meets the purpose and objective of the AVA Plan's RUI land use:
 - Reclaims a mine
 - Green Industry- Compost/Recycling
 - Insignificant water use
 - Provides Jobs

Future Land Use



- FUTURE LAND USE DESIGNATION**
- AGP - Agricultural Production
 - CDR - Community Development Reserve
 - CUF - Community & Utility Facilities
 - HDR - High Density Residential
 - LDR - Low Density Residential
 - OST - Open Space, Parks and Trails
 - RAC - Rural Activity Center
 - RCR - Rural Cross Roads
 - RDR - Rural Density Residential
 - RUI - Rural Industrial
 - SDA - Special Development Area (Solar, Wind, and Other)
 - SDA - Special Development Area (Federal)
 - Proposed Trails
- BOUNDARIES**
- Amargosa Valley Town Boundary
 - Parcels
 - Sectons
 - Township, Range
- ROADS**
- Paved Hwy
 - Paved
 - Unpaved

SOURCES:
Future Land Use designations automated for each parcel from inputs provided by the Amargosa Valley Area Plan Committee. The SDA YMP Gateway Area Concept Plan (June 2007) is available from the Nye County Nuclear Waste Repository Project Office. Parcels, road centerlines, Amargosa Valley town boundary, and township, range, and section boundaries from the Nye County GIS Repository (2006).

All materials to be tested and
inspected by 3rd party
Consultant

Law Offices of
Steven G. Gibbs

Telephone: 661-633-1144

2204 Truxtun Avenue
Bakersfield, California 93301

Facsimile: 661-633-1640
E-mail: lawgibbs@pacbell.net

September 21, 2012

VIA EMAIL & U.S. MAIL

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
901 South Stewart Street, Suite 401
Carson City, Nevada 89701

RE: additional clarifications and bond reduction request

Dear Mr. Holmgren:

I have been reviewing the emails between the meeting of Mining reclamation and waste management, which occurred in the latter part of August, 2012, and I wanted to cover a few issues concerning the 223 acres of boron ponds that have already been filled with dirt at the site. The site still has a few remaining sinkholes and the settlement around them appears throughout the site, after reviewing the HS a golden letter concerning lightweight issues of materials. Further, the heavy fill material causes the wet taling to move more than it would in light taling, whereas the light taling would not cause any movement in the near future. My client proposes not to use the tire mulch as per previous in NDEP instructions, but instead would use a lightweight mix of wood waste, green waste, cardboard, plastic, and inner compounds, with a mix of the borrow materials from the 80 acres already on site. The borrow area material will be mixed with the mulch so as to utilize some of the on-site clay material to hold down airborne particulate matter, with the lightweight soil amendments so as to finally cover the entire site. This product will cut down on the blowing boron materials on-site as well as off-site.

The 223 acres have a 2 foot clay liner already installed. The clay liner prevents the heavy materials from getting into the water table. The NDP directive on April 2, 2012 was satisfied on all the pond test and liner information related to the heavy materials/metals and water table issues. This existing material on the ponds has been approved to be capped and in place by NDP without any further investigations as per 04-02-2012 NDEP letter (see attached). The current tests at the site show that some

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
September 21, 2012
Page 2

high metal limits in the Anderson-Egan report (according to Silver State Lab) show that it will take the use of soil amendments, which will consist of a mixture of gypsum board, wood, tree branches, plastic, cardboard, landscape, cuttings, and green waste mixed with the on-site borrow material from private land to enhance the growth of plant life. The soil amendments will be tested prior to any implementation by Silver State analytical laboratories located in Las Vegas (3638 Sunset Rd., Suite 100, Las Vegas, NV 89120.) Todd Suessmith has already told my client that no analytical lab test were required for the soils pursuant to the attached email sent on April 2, 2012.

Concerning the actual mill hill site, it will be left in place for future industrial use. The mill hill will be improved with borrow materials to make it more accessible. Further, the pond area is the only part of the property that would be mixed with lightweight material and With the soil amendments as related above. This method will allow my client, Robert Ford to eliminate dust, as well as cover the sinkholes. The bond reduction is attached for areas and parts of storage yards that are not needed on the bond. The bond reduction is attached for \$157,216 along with the map of borrow source areas to be utilized to mix with the lightweight soil amendments.

My client will still submit the modification into waste management and be able to transfer the existing permit to a class III landfill permit as discussed. The amount of the small class III landfill bond will not exceed the fill area depth of 1 foot of materials that will be required to cover the boron materials, thereby allowing growth. The Silver State Lab research from the chemical tests taken in 2007 relayed that the heavy metals were so high that it would not allow growth of any plants are natural desert weeds without substantial amendment. The current clay liners that are in place and the existing dam should be already engineered for the 1 foot of light materials to be installed.

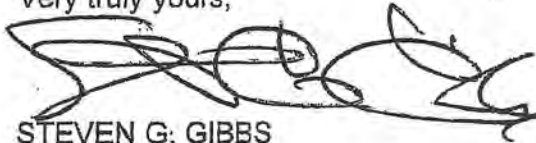
My client and I would like to greatly thank all of you at NDP who been involved with all of your help on the project to date. My client still needs a few clarifications to avoid any issues from spending the wrong amounts of funds by producing the improper mulches and soils for the reclamation, which would not be acceptable from NDP. To that end, my client wants to know whether or not he needs to get a permit to install the soil amendments and process on-site after the Silver State test to ensure that there is no contamination in materials under the active permit 0171 (which states that no fires can be included). The materials will be hauled on-site and tested monthly before installation in the sinkholes and the uncovered ponds on site only. The balance of the 223 acres will not be receded at this time until class III landfill modification is completed and new bond posted. After obtaining this class III landfill permit, there is no further requirement concerning the Mining Department and the balance of the seeding will be dismissed and complete bond refunded upon completion of the new class III permit.

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
September 21, 2012
Page 3

This is our understanding. Hopefully with the last clarifications. My client will be able to finalize the existing work and remove the daily water costs from the site.

Should you have any additional questions or need for further documentation, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SGG', with a stylized flourish at the end.

STEVEN G. GIBBS

SGG/kmh

cc: Mr. Robert Ford.



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
Brian Sandoval, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

July 13, 2017

Robert Ford
ABC Recycling Industries, LLC
4475 South Pecos Road
Las Vegas, NV 89121

Re: Lathrop Mill Composting Facility SW1773
Application Completeness Review Comments

Dear Mr. Ford:

The Nevada Division of Environmental Protection (Division) – Bureau of Waste Management (BWM) is in receipt, on July 10, 2015, of the application for a Composting Facility to be located at the Lathrop Mill Site. Please note that this facility has been assigned number SW1787.

The application has been reviewed for completeness and the following comment was noted:

The BWM requires that all local approvals must be obtained in order for an application to be considered complete. Until such time that documentation verifying all local government approvals have been granted, the Lathrop Mill Composting Facility application will be considered incomplete and the technical review may not begin.

Please provide the information requested above. If you have any questions you may contact me at (775) 687-9477 or PEckert@ndep.nv.gov.

Sincerely,

Paul Eckert, P.E.
Staff Professional Engineer
Permitting Branch
Bureau of Waste Management

PE:dl

cc: Eric Noack, Chief, BWM
Mike Leigh, P.E., Supervisor, Permitting Branch, BWM
Mike Ruffner, Solid Waste Inspector, BWM
Paul Eckert, P.E., Permitting Branch, BWM
Darrel Lacy, Director, Nye County Planning llacy@co.nye.nv.us
Robert Ford, ABC Recycling Industries, LLC loncagle1@hi-speed.us

File: 1787_PEckert_07132017_13_SW_Lathrop Mill Compost_Application Review

Trip Report February 6 - Nye County

Sean Brown February 7, 2020

Meeting with Nye County Planning Department	1
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Nye County Business License Not Required - Check with Amargosa Valley	2
NDEP Inspections Suffice	2
Permits	2
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Post-Meeting Activity	3
Steve Sotomeyer	3
Ron Murphy	3
HSA Golden Case	3
James Wilson	3
David Bell	4
Paused on Internet and Security Systems	4
Searchlight Sales	4
Return Home	4

Nye County Planning Department
250 NV-160 #1, Pahrump, NV 89060
Steve Osborne, Principal Planner
775-751-4246

Meeting with Nye County Planning Department

Robert and I met at the South Point then headed to Kinkos at 7:30 am. Robert printed out some documents we needed and we drove his truck to the Nye County Planning Department in Pahrump. On the way we discussed what our objectives were, which was to get them to approve our plan in our NDEP 0171 Permit and not have to go through the process of applying for a landfill or other solid waste operation.

At 9 am we met with Principal Planner Steve Osborne. Steve brought with him the Planning Director, Brett Waggoner, and an field technician named Cody.

Avoiding the Solid Waste Application Process

We started off by making clear that this had nothing to do with the previous application to be a landfill. Brett Waggoner did not realize this, and his realization opened him up to listen to what we had to say. We pointed out that what we were doing was REMEDIATING the contaminated soil through the composting process, and that all of the end product was an integral part of the repaired soil. It would not be sold, and it would not be received as solid waste to be stored, but as raw materials to create our own fertilizer on site. We said that this

was a much more affordable way for us to remediate the soil that NDEP expects us, rather than paying for expensive fertilizer and soil amendments to be trucked in. This went well with them, after we discussed the composting process at length they had a very good idea of what we were wanting to do and they began to work with us to address their concerns.

The three of them discussed openly what they thought, mostly discussing whether or not they thought we fit in the "landfill / private disposal / storage" operation and have to go through that process. It wasn't hard for them to all agree that we were operating within the NDEP permit and that they would prefer to be as hands off on this as possible.

Their Main Concern: Trash Mitigation

That left them with their main concern, which was the potential for the site to turn into a trash heap "like Steve Sotomeyer's property." They described how Sotomeyer had a written agreement that he would only bring green waste out to the property and that there would be no other type of solid waste mixed in. Apparently Sotomeyer was very lax about what was dumped out there Brett and Cody say that there is a lot of trash out there now, some of it blowing around, some of it large pipes and old PVC. Robert said that he knew Sotomeyer and Brett suggested that we work out a deal to take the green waste piled on Sotomeyer's property and use it for some of the feedstock on Robert's property. Brett then told us to warn Sotomeyer that the only reason he has not been cited by Nye County is due to manpower issues, but it's only a matter of time, so he needs to address it.

Nye County Business License Not Required - Check with Amargosa Valley

We discussed our ability to be paid tipping fees for the feedstock. They said that Nye County would not require a Business License, but that the town of Amargosa Valley might. We said that we would check with Amargosa Valley on this.

NDEP Inspections Suffice

The question of inspections came up. Robert said NDEP would be inspecting a couple of times a year. They said that if NDEP was inspecting and we could provide a record of compliance, they would not need to regularly inspect the site.

Permits

They said we need to make sure we have a Processing Permit and a Surface Area Disturbance Permit, which are supposedly included in the NDEP 0171 Permit process.

Ron Murphy's Gravel Operation

We discussed Ron Murphy pulling gravel off of the property and this was a concern for Cody. He said we would need to cross reference the PRPD and it might require a Conditional Use Permit or Special Use Permit. If Ron Murphy is going to sell gravel out of there and not just move it around the property, there will need to be permits. Robert said we would talk to Ron Murphy immediately. (We met him in person afterward, see below.)

MOU and Permit Package

Brett wants us to prepare a Memorandum of Understanding between ABC Recycling and Nye County. He referred to this unofficially as a "Justification Letter." This MOU would spell out exactly what we want to do, how we plan to prevent trash from being dumped, and how we'll dispose of the trash that we pick out of the

feedstock. They really want to be sure we address what we will do if there is a problem, if the project goes awry and there's trash on the site. Who will be responsible and how quickly that will be addressed needs to be in there.

Brett told us to gather all of our permits, including the NDEP 0171 and the permits for Ron Murphy pulling gravel out of there, and submit them with the MOU to Steve Osborne. In the meantime, we should talk to Steve Sotomeyer and Ron Murphy and check with the town of Amargosa Valley.

EXHIBIT “C”

1 BYRON THOMAS, ESQ.
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4 Las Vegas, NV 89146
5 702 747-3103
6 Attorney for Plaintiff

7 **BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION**

8 In the Matter of:

9 ABC RECYCLING LLCS APPEAL OF NDEP'S
10 FEBRUARY 6, 2020 DECISION TO REVOKE
11 THE LATHROP MILL RECLAMATION
12 PERMIT #0171; AND FORFEIT OF THE
13 RECLAMATION SURETY CASH DEPOSIT

14 **DECLARATION OF BYRON THOMAS**

15 I Byron E. Thomas am over the age of eighteen and I am competent to make this
16 declaration. I make this declaration based on personal knowledge.

17 I am the attorney for ABC Recycling. I have reviewed the Nevada Department of
18 Environmental Protection (the "State") motion for summary judgment.

19 The motion for summary judgment contains the pretextual argument that ABC's permit
20 is being revoked because of non-payment of fees. However, the real reason is the States
21 unreasonable withholding of approval of ABC's reclamation plan. Therefore, I need additional
22 time to oppose the Motion.

23 My client needs additional time to gather affidavits, depositions, and written discovery
24 to oppose this motion for summary judgment. There is a global pandemic that is effecting my
25 ability to communicate with clients and to gather information needed to challenge the States
26 motion for summary judgment.

27 Some of the information that ABC needs is located in Canada and electronic
28 communication has proved unreliable. In addition, I am abiding by the governors shelter in
place orders and I am conducting business from home. Unfortunately I am not the only one and
my internet connection has proved unreliable.

///

The discovery will show that the State has been unreasonably withholding approval of the reclamation plan of ABC and that the revocation of the permit was just a pretext that allows the State to continue to withhold approval of the reclamation plan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of April 2020

Byron Thomas, Esq.