



1 NAC 519A.235 and 519A.240. An ABC representative, Robert Ford, attended the hearing  
2 and did not indicate that ABC intended to pay the overdue annual fee. NDEP set  
3 January 24, 2020, as ABC's final deadline to pay its annual permit fee, and ABC did not  
4 pay the fee after the hearing. On February 6, 2020, NDEP notified ABC that it had  
5 revoked the Permit and forfeited its cash surety bond under the authorities cited above.  
6 As described more fully below, NDEP acted well within its statutory and regulatory  
7 authority in taking these actions. For this reason, the SEC should enter judgment in  
8 NDEP's favor without a hearing since the material facts that support NDEP's actions are  
9 not in genuine dispute.

## 10 II. STATEMENT OF FACTS

11 On June 9, 2015, NDEP transferred reclamation permit #0171 (the "Permit") to  
12 ABC for the operation of Lathrop Mill. *See* the Declaration of Joseph Sawyer, attached as  
13 Exhibit 1, at ¶ 1. NRS 519.260 requires each operator holding such a permit to, on or  
14 before April 15 of each year, pay NDEP a fee based on the amount of land that has been  
15 disturbed by mining operations or exploration projects engaged in by the operator and not  
16 reclaimed. Additionally, NAC 519A.235 establishes a regulatory fee due on April 15 of  
17 each year that requires each mining operation for which a permit has been issued to  
18 submit a fee based on the total amount of affected land. Pursuant to those statutes and  
19 regulations, ABC was required to submit an annual permit fee of \$4,166 to NDEP by  
20 April 15, 2019. *Id.* at ¶ 4. ABC failed to pay the fee by the April 15 deadline, and NDEP  
21 issued a Notice of Noncompliance and Order on August 13, 2019. *See* NDEP's August 13,  
22 2019, Notice of Noncompliance and Order attached as Exhibit 2. The Notice directed ABC  
23 to pay the fee by September 13, 2019. *Id.* ABC did not respond to the Notice of  
24 Noncompliance and Order, and NDEP sent a second Notice requiring payment by  
25 October 11, 2019. *See* NDEP's September 16, 2019, Notice of Noncompliance and Order  
26 attached as Exhibit 3. Although ABC acknowledged that it received the Notice, it still  
27 failed to make its annual permit fee payment. *See* Exhibit 1 at ¶ 6.

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1 On November 21, 2019, NDEP sent ABC a letter setting a hearing date for  
2 January 10, 2020, regarding possible suspension or revocation of ABC's reclamation  
3 permit and forfeiture of ABC's cash deposit due to its failure to provide its annual permit  
4 fee. See NDEP's November 21, 2019, letter attached as Exhibit 4. At the hearing, ABC's  
5 representative, Robert Ford, informed NDEP that ABC was reluctant to put any  
6 additional money into the property, which included paying the annual permit fee. See  
7 Exhibit 1 at ¶ 8. At the end of the hearing, NDEP provided ABC with a final deadline of  
8 January 24, 2020, to submit its annual permit fee. *Id.*

9 Despite NDEP's many attempts to gain compliance, ABC still failed to pay its  
10 \$4,166 annual permit fee. *Id.* at ¶ 9. For that reason, NDEP sent a letter to ABC on  
11 February 6, 2020, informing ABC that NDEP made the decision to revoke Lathrop Mill  
12 Reclamation Permit #0171 and that ABC's cash deposit would be forfeited to reclaim the  
13 site. See NDEP's February 6, 2020, Decision attached as Exhibit 5.

### 14 III. LEGAL ANALYSIS

#### 15 A. The SEC May Grant Summary Judgment in NDEP's Favor at a 16 Prehearing Conference

17 A party aggrieved by NDEP's revocation of an operating permit may appeal to this  
18 Commission. See NRS 445B.360. The appeal must state the Appellant's legal and factual  
19 basis for the appeal. See NAC 445B.890(3). Under NAC 445B.8913, the Commission may,  
20 upon a motion made by a party, conduct a prehearing conference to consider an action or  
21 procedure that would expedite the disposition of the proceedings. NDEP requests that the  
22 SEC utilize its power under NAC 445B.8913 to enter summary judgment in favor of  
23 NDEP.

24 Summary judgment is appropriate when "no genuine issue of material fact exists,  
25 and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*,  
26 121 Nev. 724, 729 (2005). A factual dispute is genuine when the evidence is such that a  
27 rational trier of fact could return a verdict for the nonmoving party. *Id.* While the  
28 pleadings and proof must be construed in a light most favorable to the nonmoving party,

1 that party bears the burden to “do more than simply show there is some metaphysical  
2 doubt” as to the operative facts in order to avoid summary judgment being entered in the  
3 moving party’s favor. *Id.* at 732. “If the non-moving party will bear the burden of  
4 persuasion at trial, the party moving for summary judgment may satisfy the burden of  
5 production by either (1) submitting evidence that negates an essential element of the  
6 nonmoving party’s claim, or (2) ‘point out . . . that there is an absence of evidence to  
7 support the nonmoving party’s case.’” *Cuzze v. Univ. & Cmty. College Sys. of Nev.*,  
8 123 Nev. 598 (2007), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548  
9 (1986).

10 **B. There Are No Genuine Issues of Material Fact in This Case – ABC’s**  
11 **Appeal Does Not Dispute That it Failed to Pay its Mandatory Annual**  
12 **Permit Fee**

13 ABC’s Appeal does not dispute the underlying factual basis for NDEP’s revocation  
14 of the Permit. NDEP’s February 6, 2020, letter revoking ABC’s Permit makes clear that  
15 NDEP based its decision on ABC’s failure to timely pay its required annual permit fee.  
16 See Exhibit 5. This annual fee payment is required by NRS 519A.260 and NAC 519A.235,  
17 and critical to NDEP’s Bureau of Mining Regulation and Reclamation, as 100% of the  
18 Bureau costs and expenses are paid for by industry fees such as this. Exhibit 1 at ¶ 3.  
19 NDEP’s Bureau of Mining Regulation and Reclamation serves the vital function of  
20 regulating the environmental impacts of the mining industry. *Id.* at ¶ 1. Notably, ABC’s  
21 Appeal does not contend that it paid the permit fee to NDEP. Rather, ABC’s grounds of  
22 appeal are entirely unrelated to NDEP’s decision to revoke the Permit. See ABC’s Appeal  
23 at 2 (“NDEP failed to provide the test results of the tailings from American Borite”).  
24 Accordingly, no genuine issue of material fact exists regarding the factual basis for  
25 NDEP’s decision to revoke the Permit.

26 Further, ABC’s Appeal does not claim that NDEP failed to provide ABC with due  
27 process in revoking the Permit. NRS 519A.270, states that “if the Division has reason to  
28 believe that any provision of NRS 519A.010 to 519A.280, inclusive, . . . or any regulation  
adopted by the Commission pursuant to NRS 519A.160 has been violated, the Division

1 shall serve a notice of noncompliance upon the holder of the permit." The Division may  
2 suspend or revoke a permit on the same grounds after notice and hearing.  
3 NRS 519A.150(9). In this case, NDEP provided ABC with two notices of noncompliance  
4 and conducted a hearing with ABC regarding its alleged violations. ABC's Appeal makes  
5 no contention that NDEP violated any of the due process requirement in NRS 519A.270  
6 and 519A.150(9), and so no issue of material fact exists on this issue.

7 Since ABC does not dispute that it did not pay its annual permit fee, or that NDEP  
8 followed the notice procedures established in NRS 519A.150(9) and 519A.270, no genuine  
9 issues of material fact exist in this case.

10 **C. Given That ABC Failed to Pay its Mandatory Annual Permit Fee,  
11 NDEP Acted Lawfully in Revoking ABC's Permit**

12 Under NAC 445B.890(3), ABC is required to state the legal basis for its appeal, and  
13 reference each provision of law that NDEP allegedly violated. In its Appeal, ABC asserts  
14 only that NDEP's "final decision was affected by other error of law." See ABC's Appeal  
15 at 1. An error of law is apparent if "the legal point is obvious, not reasonably in dispute."  
16 *State v. Fuerte-Coria*, 196 Or. App. 170, 173, 100 P.3d 773, 775 (2004). An error of law is  
17 not present when "any reasonable hypothesis can be found to support the questioned  
18 interpretation." *Hanover Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 226 A.D.2d 533, 534,  
19 641 N.Y.S.2d 547 (1996). Further, "an administrative agency charged with the duty of  
20 administering an act is impliedly clothed with the power to construe the relevant laws  
21 and set necessary precedent to administrative action, and the construction placed on a  
22 statute by the agency charged with the duty of administering it is entitled to deference."  
23 *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 624 (2013).

24 In this case, NDEP unquestionably acted within its legal authority in revoking  
25 ABC's Permit. NRS 519A.150 states that NDEP may "suspend or revoke a permit upon a  
26 noticed hearing and a finding by the Division that the holder of the permit violated any  
27 provision of NRS 519.010 to 519A.280, inclusive, . . . or any regulation adopted by the  
28 Commission pursuant to NRS 519A.160." Further, a surety filed with the Division is

1 subject to forfeiture if the permit is suspended or revoked pursuant to NAC 519A.220. See  
2 NAC 519A.390. Under NAC 519A.220, "if the Division suspends or revokes a permit for  
3 noncompliance with the provisions of 1. NAC 519A.010 to 519A.415, inclusive; [or]  
4 Chapter 519A of NRS . . . the [] revocation is effective not later than 30 days after the  
5 operator is sent notice by the Division setting forth the facts and conduct warranting the  
6 revocation . . ."

7 As stated above, ABC violated NRS 519A.260 and NAC 519A.235 by failing to  
8 timely pay its annual reclamation fee by April 15, 2019. Based on this fact alone, NDEP  
9 had authority to revoke ABC's Permit and forfeit ABC's surety. NDEP took that action on  
10 February 6, 2020, and that decision took effect ten days after it was made. ABC's Appeal  
11 makes no claim that NDEP failed to follow the statutory due process requirements for  
12 revoking its Permit. Based on these undisputed facts, it is clear ABC's failure to pay its  
13 annual permit fee provided a sufficient basis to revoke ABC's Permit and forfeit its cash  
14 surety. Therefore, NDEP committed no "error of law" in deciding to revoke ABC's Permit.

#### 15 IV. CONCLUSION

16 For these reasons, the Commission should uphold NDEP'S February 6, 2020,  
17 decision to revoke the Lathrop Mill Reclamation Permit #0171 because ABC's Appeal fails  
18 to set forth any facts or law showing that NDEP acted outside the scope of its jurisdiction

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1 and authority. This case is appropriate for summary judgment because the material  
2 underlying procedural and substantive facts that support NDEP's decision are not  
3 genuinely in dispute, and NDEP's decision is based on a straightforward interpretation  
4 and application of the applicable law.

5 DATED this 11 day of March, 2019.

6 AARON D. FORD  
7 Attorney General

8 By:

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17 *Environmental Protection*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that I am an employee of the State of Nevada, Office of the  
20 Attorney General, and on this 11 day of March, 2020, I served a copy of the  
21 foregoing, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S MOTION FOR  
22 SUMMARY JUDGMENT, via email to:

23 Val King  
24 Executive Secretary  
25 State of Nevada  
26 State Environmental Commission  
27 E: [vking@ndep.nv.gov](mailto:vking@ndep.nv.gov)

28 Robert Ford  
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Daniel Nubel  
Daniel P. Nubel

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