

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2 In the Matter of:

3 AVIS BUDGET CAR RENTAL, LLC'S
4 APPEAL OF LETTER REJECTING THE
5 ADDENDUM TO THE OFF-SITE
6 CORRECTIVE ACTION PLAN FOR THE
7 COMMINGLED MTBE PLUME

ORDER AFFIRMING NEVADA
DIVISION OF ENVIRONMENTAL
PROTECTION'S LETTER
REJECTING THE ADDENDUM
TO THE OFF-SITE CORRECTIVE
ACTION PLAN FOR THE
COMMINGLED MTBE PLUME

8 **PROCEDURAL HISTORY**

9 On October 1, 2018, Avis Budget Car Rental, LLC ("ABCR") submitted the
10 Addendum to the Off-site Corrective Action Plan for the Commingled MTBE Plume ("CAP
11 Addendum") to the Nevada Division of Environmental Protection ("NDEP"). On October
12 15, 2018, NDEP sent ABCR a letter rejecting the CAP Addendum. On October 29, 2018,
13 ABCR appealed NDEP's letter rejecting the CAP Addendum. ABCR's grounds of appeal
14 were: (1) the final decision was clearly erroneous in view of the reliable, probative and
15 substantial evidence of the whole record, and (2) the final decision was arbitrary or
16 capricious or characterized by abuse of discretion.

17 The SEC set a briefing schedule. The SEC set a hearing date of March 14, 2019 for
18 ABCR's appeal. ABCR submitted its Opening Brief on January 24, 2019. NDEP
19 submitted its Response Brief on February 14, 2019. ABCR submitted its Reply Brief on
20 February 28, 2019.

21 **SUMMARY OF HEARING**

22 On March 14, 2019, a Panel of the SEC, with Commission members James Gans,
23 Mark Turner and Rich Perry, held a hearing on ABCR's appeal of NDEP's letter rejecting
24 the CAP Addendum. At the time of the hearing, ABCR was present and represented by
25 Linda Bullen, Esq. NDEP was present and represented by counsel, Deputy Attorney
26 General Daniel Nubel. The Panel was represented by Deputy Attorney General Henna
27 Rasul.

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1 Upon the request of both party's counsel, the SEC ruled on an initial legal matter
2 relating to NDEP's authority under NAC 445A.22725. The SEC held that, although
3 NDEP cannot mandate an owner or operator request a groundwater exemption closure
4 under NAC 445A.22725(2), NDEP can issue an exemption to not require further
5 corrective action under NAC 445A.22725(1). Additionally, under NAC 445A.22691, NDEP
6 may require an owner or operator to conduct further characterization and submit
7 additional information to NDEP for determination of whether further corrective action is
8 necessary.

9 At the start of the hearing, the parties stipulated to the admission of NDEP and
10 ABCR's exhibits. Both parties gave opening statements. ABCR presented its case-in-chief
11 by calling witnesses Jason Hoffman, Robert Schulz and Rose Pelino. Jason Hoffman is an
12 Associate Geologist with Broadbent & Associates, Inc. Robert Schultz is ABCR's
13 environmental consultant who worked with Jason Hoffman in creating the CAP
14 Addendum. Rose Pelino is a former ABCR employee.

15 At the conclusion of ABCR's case, NDEP motioned for a Directed Verdict, arguing
16 that ABCR had failed to prove by a preponderance of the evidence that NDEP acted
17 arbitrary or capriciously in rejecting the CAP Addendum, or that NDEP's decision to deny
18 the CAP Addendum was clearly erroneous. The SEC allowed NDEP and ABCR to present
19 arguments regarding NDEP's Motion for a Directed Verdict. NDEP argued that there was
20 no need to proceed beyond ABCR's case-in-chief because the evidence ABCR produced
21 during its case failed to show that NDEP acted arbitrarily or capriciously, or that NDEP's
22 decision was clearly erroneous. ABCR presented its argument in opposition to the motion.
23 Having submitted their arguments to the Panel, the Panel members discussed and
24 deliberated the motion based upon the testimony and exhibits presented and admitted
25 into evidence during the hearing. At the conclusion of its deliberation, the Panel made a
26 determination that ABCR failed to prove by a preponderance of the evidence that NDEP's
27 letter rejecting the CAP Addendum was arbitrary or capricious, or that the rejection was
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1 clearly erroneous. For that reason, the SEC granted NDEP's Motion for a Directed
2 Verdict and affirmed NDEP's letter rejecting the CAP Addendum.

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5 **CONCLUSION**

6 The State Environmental Commission hereby affirms the Nevada Division of
7 Environmental Protection's October 15, 2018 Letter Rejecting the Addendum to the Off-
8 site Corrective Action Plan for the Commingled MTBE Plume.

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10 DATED this 3 day of April, 2019.

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13 By: 

14 Member
15 State Environmental Commission
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1 **CERTIFICATE OF SERVICE**

2 I, Valerie King, certify that I am an employee of the State of Nevada, State
3 Environmental Commission, and do hereby certify on this 10th day of April, 2019, I
4 electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and
5 correct copy of the foregoing document, postage prepaid, to the following:

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An employee of the State
Environmental Commission