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BEFORE THE STATE ENVIRONMENTAL COMMISSION

Appeal regarding Air Quality Violation No.
3139, Class II Air Quality Operating Permit
AP 1611-0835.03 (FIN A0480)

OPENING BRIEF

Reck Bros, LLC (“Reck Bros”), by and through its attorney Lucas Foletta of McDonald Carano LLP, submits Opening Brief (“Brief”) pursuant to that certain Stipulation to Extend Briefing Schedule executed June 25, 2024 (“Stipulation”). This Brief does not purport to include each and every defense to Notice of Alleged Air Quality Violation No. 3139 (“NOAV”). Reck Bros reserve the right to raise any and all defenses and issues at the hearing on this matter. The hearing is currently scheduled to be held within thirty (30) days of completion of briefing. (Stipulation at Ordering ¶ 4.) Reck Bros notes further that, based on discussion with counsel for Nevada Division of Environmental Protection (“NDEP”), the appropriateness of the proposed penalty in this matter is not at issue at this point in the proceedings. Reck Bros will not address that issue in this brief. Instead, Reck Bros will address that issue upon a determination by the State Environmental Commission (“SEC”) that the NOAV at issue should be upheld.

The foregoing notwithstanding, Reck Bros raises one principal issue with respect to the NOAV: The source test revealed limited exceedance that does not reflect material environmental harm. The NOAV identifies a purported failed source test. However, the source test resulted in limited exceedance for PM10 that does not warrant a violation under NAC 445B.275. The plant at issue, System 3 – Drum Mixer (the “Plant”), is authorized to run 2040 hours at full capacity annually. There is no evidence that the Plant operated at or even near that level during 2023. As such, there is no evidence that the “failed” test reflected—or is indicative of—actual environmental harm. Consequently, NDEP’s decision to issue the NOAV is arbitrary and

1 capricious as is its application of the particular permit requirement at issue. The arbitrariness of
2 NDEP's actions is further supported by the fact that NDEP issued the NOAV with knowledge of
3 the Plant's limited operations.

4 In addition to the foregoing, Reck Bros generally considers the NOAV to be:

- 5 1. in violation of constitutional and statutory provisions;
- 6 2. in excess of the statutory authority;
- 7 3. made upon unlawful procedure;
- 8 4. affected by other error of law;
- 9 5. clearly erroneous in view of the reliable, probative and substantial evidence on the
10 whole record; and
- 11 6. arbitrary or capricious and otherwise characterized by abuse of discretion.

12 Reck Bros reserves the right to put forward evidence in support of alternate theories consistent
13 with the allegations stated here.

14 **DATED this 29th day of July, 2024.**

15 **McDonald Carano LLP**

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17 
18 **By:** _____

19 **Lucas Foletta, Esq.**
20 *Attorney for Reck Bros, LLC*

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PROOF OF SERVICE

I hereby certify that I electronically delivered the foregoing OPENING BRIEF on behalf of RECK BROTHERS LLC to the following persons and entities electronically to the following parties as indicated below:

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DATED: July 29, 2024.

/s/Carole Davis
An Employee of McDonald Carano LLP