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DATE: August 27, 2024

TO: Appellant:
Reck Bros, LLC
Represented by Lucas Foletta, Esq.
McDonald Carano LLP
100 West Liberty Street, Suite 1000
Reno, Nevada 89501

Respondent:
Nevada Division of Environmental Protection (NDEP)
Represented by Greg Cloward, Esq.
Office of the Attorney General

FROM: Sheryl Fontaine, Executive Secretary, State Environmental
Commission (SEC), State of Nevada
sfontaine@ndep.nv.gov

SUBJECT: Notice of Appeal Hearing: Air Quality Violation No. 3139, Class II Air
Quality Operating Permit AP 1611-0835.03 (FIN A0480)

A five-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing regarding the penalty for violation above the referenced permit. The hearing will be held on October 2, 2024, beginning at 9:00 a.m. in the Bonnie B. Bryan Conference Room (first floor) of the Richard H. Bryan Building, 901 South Stewart Street, Carson City, Nevada 89701. The hearing date was selected after consultation with interested parties.

The SEC has jurisdiction to hear this appeal pursuant to NRS 445A.425 and NRS 445A.605. The statutes and regulations allegedly violated, as cited in the request for an appeal form submitted by Reck Bros. are: NRS 445B.640(1), NAC 445B.281, NRS 445B.340, NRS 445B.360, and NAC 445B.890 2.(e) & 2.(f).

About the Appeal: On February 23, 2024, Reck Bros. filed a request for an appeal hearing. On March 6, 2024, Reck Bros. filed an amended request for appeal hearing.

In summary, Reck Bros. argues that the grounds for the violation of Class II Air Quality Operating Permit AP 1611-0835.03 issued by NDEP's Bureau of Air Pollution Control are:

- (1) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and

(2) Arbitrary or capricious or characterized by abuse of discretion.

Specific complaints in the request for an appeal hearing include that, given the nature of the particular emissions and the limited disbursement of those emissions, the facility was not a source, was not emitting air contaminants, was not emitting into the ambient air, and that therefore the violation was unwarranted and clearly erroneous. Appellant also believes that the recommended penalty may have been based on an erroneous class and/or failure category in the penalty matrix table, and on an erroneous deviation adjustment, an erroneous economic benefit calculation, and an erroneous consideration of mitigating factors and history of non-compliance.

The issues for this appeal are further clarified in the pre-hearing briefs agreed to by the SEC on May 17, 2024.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at:

<http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>

NRS 233B.121 to 233B.150 are also applicable. See:

<http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec121>

Related Information: Additional information about this appeal will be available on the SEC website at the following location:

<https://sec.nv.gov/meetings/appeal-reck-brothers>

ecc: NDEP
NDEP AG
DAG
SEC/DAG