

1 In this proceeding, the NDEP will be represented by:
2 Belinda Suwe
3 Deputy Attorney General
4 100 N. Carson Street
5 Carson City, NV 89701

6 c. Petitioner's interest in the proceedings.

7 Because the NDEP is responsible for enforcement of NRS and NAC Chapter 445B
8 (Nevada's air pollution control laws), NDEP has a direct and substantial interest in upholding
9 the penalties levied by the SEC, which sanction TWA for violations identified by the NDEP in
10 the aforementioned NOAVs and in defending its penalty recommendations to the SEC.

11 d. The manner in which the petitioner may be affected by the proceedings.

12 As noted above, the NDEP is responsible for enforcement of and ensuring compliance
13 with the Nevada's air pollution control laws. If the NDEP's violations and penalty
14 recommendations are not upheld and enforced by the SEC, then the NDEP's ability to garner
15 compliance with Nevada's air pollution control laws will be severely limited.

16 e. Statement regarding whether the petitioner intends to present evidence at
17 the hearing.

18 At this time, the NDEP does not intend to submit evidence at the hearing because the
19 SEC lacks jurisdiction to hear the appeal. However, should the SEC decide to proceed with
20 an appeal hearing, in clear contradiction to its regulations, the NDEP respectfully requests to
21 reserve the right to petition the SEC to present evidence at that time.

22 For these reason, NDEP's petition to intervene should be granted.

23 **II. The Appeal Must Be Dismissed Because it is Not Based on a Final
24 Decision of the Department and the NOAVs are Final.**

25 a. TWA cannot appeal a final decision of the SEC to the SEC.

26 Pursuant to NAC 445B.890, "[a]ny person aggrieved by a final decision of *the*
27 *Department* may . . . appeal the decision . . . with the State Environmental Commission." In
28 this case, TWA seeks to appeal a penalty levied by the SEC, not the Department. As such,
the Appeal is procedurally invalid and must be dismissed.

1 CERTIFICATE OF SERVICE

2 I, Sandra Geyer, certify that I am an employee of the Office of the Attorney General,
3 State of Nevada, and that on this 11th day of October, 2017 I transmitted a true and correct
4 copy of the foregoing **NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S PETITION**
5 **FOR LEAVE TO INTERVENE AND MOTION TO DISMISS APPEAL FILED BY TAHOE**
6 **WESTERN ASPHALT, LLC.**, via email to the following:

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11 Mark Simons
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13 
14 SANDRA L. GEYER