



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING  
(Provide attachments as needed)

RECEIVED

OCT 04 2017

1. Name, address, telephone number, and signature of appellant:

Name: Tahoe Western Asphalt, LLC

Physical Address: 8013 US 50 East, Carson City, Nevada

E-mail Address: Msimons@rssblaw.com

Telephone Number: 775-329-7941

Signature:

Representative capacity (if applicable): Attorneys for Tahoe Western Asphalt, LLC

2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

See Attachment 1

5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

See Attachment 2

Date of Request: October 2, 2017.

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701

## Attachment 1

**4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.**

### **A. Jurisdiction to hear the appeal**

The State Environmental Commission has jurisdiction to hear the appeal based upon the authority granted to it in NRS 445B.340 and NAC 445B.890 (1).

### **B. Sections involved in appeal**

Pursuant to NAC 445B.890 (2), this appeal is based on the following grounds:

1. The final decision was affected by other error of law;
2. The final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
3. The final decision was arbitrary or capricious or characterized by abuse of discretion.

## Attachment 2

**5. For each ground of appeal checked above, provide a brief and concise statement of facts which provide the basis for the appeal.**

The penalty issued by the Nevada State Environmental Commission (SEC) against Tahoe Western Asphalt (TWA) on September 22, 2017 based on the Nevada Division of Environmental Protection ("NDEP") recommendations are erroneous, arbitrary, capricious, and/or characterized by abuse of discretion for the following reasons:

1. Travis Osterhout fraudulently made misrepresentations to the SEC, causing the SEC's ruling to be clearly erroneous, arbitrary, capricious, and result in an abuse of discretion.
2. The penalty was imposed based on an error of law because it did not consider that NDEP granted TWA an extension, or that there was a lack of corrective notice to TWA.
3. The penalty was arbitrary, capricious, and/or abuse of discretion due to the margin of error in testing air quality, and the lack of notice between testing.

**I. Travis Osterhout, As A Representative Of NDEP, Perpetrated Fraud By His Failure To Disclose That NDEP Granted TWA An Extension To The 180 Day Testing Requirement.**

Travis Osterhout, in his position as Supervisor of the Compliance and Enforcement Branch of NDEP, perpetrated a scheme of fraud to cause undue financial hardship upon TWA. Mr. Osterhout blatantly ignored and did not disclose to the SEC that NDEP granted TWA an extension to obtain testing based on TWA's unconventional operating schedule. First, Mr. Osterhout issued a Notice of Alleged Violation for TWA's failure to obtain testing at 180 days after start up even though TWA had an extension and was not even operating at that time. Second, Mr. Osterhout failed to provide TWA notice that TWA was allegedly in violation until over 6 months after the violation. Mr.

Osterhout was motivated by complaints of nearby residents, and carried out the Notices of Alleged Air Quality Violation in an attempt to shut down operations at TWA.

#### A. NDEP Granted TWA an Extension for Testing

On October 13, 2016, NDEP extended the permit's requirement that TWA perform initial air quality tests 180 days after the start of operations. (See *October 13, 2016 NDEP email attached hereto as Exhibit 2*)<sup>1</sup>. NDEP granted the extension because TWA does not operate on a traditional year-round schedule like most businesses. (Robert Matthew's Declaration attached hereto as Exhibit 11 at ¶ 11 ). TWA's operating schedule follows an unusual seasonal schedule specific to the asphalt production industry. (Exhibit 11 at ¶ 5). Every year, he does not operate in winter months because the weather becomes too cool to lay asphalt. (Exhibit 11 at ¶ 7). TWA completely shuts down operations in the winter because asphalt production is necessarily tied to the ability to lay asphalt in the warm weather. (Exhibit 11 at ¶ 7). Accordingly, TWA was completely shut down between fall 2016 and spring 2017. (Exhibit 11 at ¶ 8).

TWA first began its initial operation on July 9, 2016 after obtaining its Class II Air Quality Operating Permit on May 23, 2016. (*Class II Air Quality Permit attached hereto as Exhibit 1; Exhibit 11 at ¶ 3*). The permit required that TWA do some initial testing within 180 days of the start of operation, July 9, 2017.<sup>2</sup> However, since the Fall of 2016, TWA was not operating without Mr. Matthews or with the cold weather. (Exhibit 11 at ¶ 6, 7). This shut down TWA's operations prior to the 180 day permit deadline for testing.

In anticipation of the TWA winter shutdown, Mr. Matthews spoke with an NDEP representative about how the shutdown would affect TWA's 180 days to test. (Exhibit 11

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<sup>1</sup> Although not included in the original record, the Commission shall take judicial notice of the email. Judicial notice is appropriate for matters of public record. *Fierle v. Perez*, 219 P.3d 906, 912 (Nev. 2009); *United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008). The email is public record because it originated from a government entity. NRS 239.010. Therefore, the email can be judicially noticed and thereby included in the record of the present matter.

<sup>2</sup> "Testing and sampling or either of them must be conducted and the results submitted to the director within 60 days after achieving the maximum rate of production at which the affected facility shall be operated, but not later than 180 days after initial startup of the facility." (Exhibit 1 §(I)(L)).

at ¶ 10). On October 13, 2016, Mr. Matthews received written confirmation from NDEP that it granted TWA an extension to carry out its initial testing. (See Exhibit 2). The email explains that, "if your facility will not operate more than 180 days prior to shut down this season, testing will be required as soon as production begins again in the spring." (Exhibit 2). The email indicated that TWA was required perform when Mr. Matthews started operations in the spring 2017.<sup>3</sup> Clearly, NDEP provided TWA an extension to obtain testing beyond the standard 180 days from the date of operation.

TWA restarted operations in spring 2017 when the weather warmed up enough to lay asphalt and Mr. Matthews returned to Northern Nevada. (Exhibit 11 at ¶ 14). TWA arranged for its initial air quality testing soon after Mr. Matthews' return. TWA completed the initial air quality tests in spring 2017. (Exhibit 11 at ¶ 14). TWA complied with the testing requirements in its air quality permit because it had an extension to complete testing.

On June 13, 2017, Mr. Osterhout sent TWA notice that it was in violation of the 180-day initial test requirements. (See Draft Notices of Alleged Air Quality Violations attached hereto as Exhibit 3). The draft notices, No. 2619 and No. 2620, alleged that the 180-day testing requirements for performance and opacity were up on January 5, 2017. (Exhibit 3). Violations No. 2619 and No. 2620 state that as of January 5, 2017, TWA was in violation of its permit. (Exhibit 3). This is clearly erroneous taking into account that NDEP granted an extension until spring 2017, and TWA was not even operating on or around January 5, 2017.

During the entirety of Mr. Osterhout's testimony that TWA was in violation of its NDEP permit for failing to test within the initial 180 days, Mr. Osterhout failed to acknowledge or disclose that NDEP granted an extension. Mr. Osterhout knew or should have known about the extension when he issued the notices of alleged violations. Mr. Osterhout fraudulently misrepresented to the Commission that as of January 5, 2017, TWA was in violation of the testing requirement. TWA was not

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<sup>3</sup>The NDEP email stated that, "if operation commences more than 180 days without testing, a notice of alleged violation will be issued." (Exhibit 2).

operating in January 2017. TWA was shut down because the asphalt industry does not operate in the winter. (Exhibit 11 at ¶ 7). Mr. Osterhout knew or should have known that TWA was not operating in January, 2017, when he decided in June, 2017 that TWA was in violation of its permit. Mr. Osterhout's blatant omission of this fact suggests that Mr. Osterhout materially misrepresented facts before the Commission. Therefore, the penalty imposed upon TWA based on this fraudulent information was clearly erroneous, arbitrary, capricious, and an abuse of discretion.

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**B. The Timing of the Notices Shows the Appearance of Fraud**

The following chart displays the violations and the differences between the dates of alleged violations and the dates in which TWA received notice of the violations:

**TWA VIOLATIONS**

	<b>No. 2619</b>	<b>No. 2620</b>	<b>No. 2621</b>	<b>No. 2622</b>	<b>No. 2623</b>
<b>Type of Violation</b>	Failure to conduct initial performance testing	Failure to conduct initial opacity testing	Failed opacity test at 22.5%	Failed opacity test at 32.08%	Failed opacity test at 28.5%
<b>Date: Alleged Violation</b>	1/5/2017	1/5/2017	4/25/2017	4/27/2017	4/28/2017
<b>Date: Draft Notice of Violation</b>	6/13/2017	6/13/2017	6/14/2017	6/15/2017	6/15/2017
<b>Date: Final Notice of Violation</b>	7/11/2017	7/11/2017	7/11/2017	7/11/2017	7/11/2017

The first time TWA received notice that it was in violation of its air quality permit was in June, 2017, when Mr. Osterhout concocted a plan to hit TWA with as many violations as he could think of in an effort to cause severe financial hardship on TWA. Each of the five alleged violations themselves occurred at different times, from January 2017 to April 2017. The first two violations, No. 2619 and No. 2620, alleged that TWA did not timely conduct its initial air quality tests as of January 5, 2017. (Exhibit 3).

Violation No. 2621 alleged that on April 25, 2017, TWA emitted air at 22.5% opacity which is over the 20% limit. (See *Draft Notice of Alleged Air Quality Violation and Order No. 2621* attached here to as Exhibit 5). Next, violation No. 2622 alleged that on April 27, 2017, TWA emitted air at 32.08%. (See *Draft Notice of Alleged Air Quality Violation and Order No. 2622* attached here to as Exhibit 7). Finally, violation No. 2623 alleged that on April 28, 2017, TWA emitted air at 28.5% opacity. (See *Draft Notice of Alleged Air Quality Violation and Order No. 2621* attached here to as Exhibit 9).

Appallingly, TWA received no notice of these alleged violations until June, 2017. (Exhibit 3; Exhibit 5; Exhibit 7). Even though TWA did not receive notice, Mr. Osterhout applied multipliers to the fines associated with the violations. The fine schedule multiplies a fine based on the number of previous incidences.<sup>4</sup> By the fifth violation, the fine was multiplied by 20% for previous violations that were actually all noticed together. It appears as though Mr. Osterhout attempted to issue violations and inflate fines that would significantly financially burden TWA.

There is no explanation why Mr. Osterhout waited between six and three months to issue these notices other than the suggestion that around that time the nearby residents repeatedly complained to Mr. Osterhout that they did not like TWA's presence in their neighborhood. TWA is zoned for industrial use, but is located next to a residential subdivision. (Exhibit 11 at ¶ 4). In late spring of 2017, the residents began pestering Mr. Osterhout to shut down TWA operations. (Exhibit 11 at ¶ 18). The residents were even heard at the penalty hearing making claims that Mr. Osterhout told them he was going to shut down TWA. (Exhibit 11 at ¶ 19). Mr. Osterhout's position is not to protect the interests of residents who purchased homes next to an industrial area; instead, it is to oversee compliance of air quality standards. TWA has great concern for Mr. Osterhout's appearance of impartiality.

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<sup>4</sup> See SEC penalty findings attached hereto as Exhibit 10. For each previous violation, the fine is multiplied by 5%.

Overall, the SEC's penalty relied on fraudulent information from Mr. Osterhout. The information Mr. Osterhout, as a representative of NDEP, presented to the Commission did not represent a complete picture of the facts. He did not disclose that NDEP granted TWA an extension to perform initial testing. He did not draft violations at or near the time of the alleged violations. The pending Freedom of Information Act request for Mr. Osterhout's phone and email records will show that neither he nor his employees notified TWA of its violations until June 2017. This is exactly the type of situation that Commission oversight is designed to prevent. Mr. Osterhout's fraud in itself represents strong grounds for which the Commission should overturn the penalty issued on September 22, 2017.

**II. The SEC Penalties for Violations No. 2619 and No. 2620 Were Issued in Error of Law Because TWA Did Not Violate Its Permit After NDEP Granted An Extension.**

TWA was never in violation of the Class II Air Quality Permit's initial testing requirements. However, NDEP issued two notices of violation, No. 2619 and No. 2620, for TWA's failure to conduct initial testing as of January 5, 2017. NDEP specifically granted TWA an extension to test beyond 180 days from initial startup based on its unique seasonal operating schedule. (Exhibit 2). TWA was not operating at all on January 5, 2017, did not restart operations until spring 2017, and was within its extended time to perform initial testing. (Exhibit 11 at ¶ 17). It was an outright error of law to issue a violation for failure to obtain testing as of that date, and then apply a multiplier for the second violation.

The strict 180-day initial testing requirement did not apply to TWA based on NDEP's own representations. NDEP granted TWA an extension to obtain testing based on TWA's seasonal operating schedule. TWA was to obtain testing in the spring when it restarted its operations because TWA shut down operations before the initial 180-day cut off. (Exhibit 2). In fact, TWA scheduled testing when it was set to restart operations spring of 2017. (Exhibit 11 at ¶ 16). Due to no fault of their own, the testing company was sold and a noncompete clause prohibited the company from performing the test

work. (Exhibit 11 at ¶ 15). TWA scheduled the next available company, which took place about a month after it began operations. (Exhibit 11 at ¶ 16). The testing was then performed at the soonest available date, April 25, 2017. (Exhibit 11 at ¶ 17). TWA complied with the extended time to test its facility's emissions.

Thus, it was an error of law to penalize TWA for a failure to test as of January 5, 2017. TWA was not required to test by January 5, 2017, because NDEP extended the time from 180 days to a general requirement that TWA test when it restarts operations. TWA performed the requisite tests once it started operations in the spring of 2017. The violation was incorrectly issued, and the accompanying penalty should be reversed.

**III. The SEC Penalty was Arbitrary, Capricious, and an Abuse of Discretion Because of the Lack of Corrective Notice to TWA and the Margin of Error in Testing.**

**A. Lack of Corrective Notice and Fine Multipliers**

Travis Osterhout issued TWA three violations in for four consecutive days, without notifying TWA of the tests or the test results.<sup>5</sup> While Mr. Osterhout claims to have notified TWA that it failed NDEP's emission's tests, TWA has no record of and disputes the existence of this notification. (Exhibit 11 at ¶ 20). Every TWA employee working on the test days will testify that no NDEP representative notified him or her that NDEP was conducting air quality tests and that TWA failed those tests. (Exhibit 11 at ¶ 20). TWA has a pending Freedom of Information Act public records request through which TWA will receive Mr. Osterhout's phone records and emails relating to TWA and the dates he directed the air quality tests. These phone and email records will verify that TWA had no notice of the April NDEP tests until TWA received draft notices of alleged violations in June 2017. It was arbitrary, capricious, and an abuse of discretion

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<sup>5</sup> First, on April 25, 2017, TWA allegedly emitted air at 22.5% opacity, which is over the 20% limit. (Exhibit 5). Second, on April 27, 2017, TWA allegedly emitted air at 32.08%. (Exhibit 7). Third, on April 28, 2017, TWA emitted air at 28.5% opacity. (Exhibit 9).

to perform tests and issue violations without giving TWA an opportunity to correct any issue with its operations emissions.

If TWA received notice that it failed one emissions test, it would not have continued operations emitting air beyond the opacity limits. (Exhibit 11 at ¶ 21). The second and third violations, No. 2622 and No. 2623, would not exist but for Mr. Osterhout's failure to notify TWA that its operations may be violating the Class II Air Quality Operating Permit. TWA should not be penalized for something it had no opportunity to correct.

The lack of corrective notice further makes the fine multipliers increasing the penalties arbitrary, capricious, and an abuse of discretion. The penalty structure multiplies a fine by 5% for every past violation. (See Exhibit 10). Mr. Osterhout first issued the two violations for failure to do initial testing; this multiplied fine from the first test on April 25, 2017 by 10%. (Exhibit 10). Then the second, April 27, 2017, penalty was multiplied by 15%. (Exhibit 10). Finally, the third, April 28, 2017, penalty was multiplied by 20%. (Exhibit 10). Impliedly so, the multiplier exists to encourage parties to cure their violation rather than incurring another future violation. It does not serve this purpose to issue penalties months after the violations without notifying the offender or giving it a chance to fix its alleged violation.

Therefore, the lack of corrective notice made the penalties themselves arbitrary, capricious, and an abuse of discretion. Then, applying a multiplier to increase the penalties added another layer of arbitrary, capricious and an abuse of discretion decision-making. The penalties for violations No. 2622 and No. 2623 should be completely reversed because they were issued without notice of the prior violation. All penalties issued should not contain a multiplier because the violations were issued months after the alleged offending dates, on June 13-15, 2017. (Exhibit 3, Exhibit 5, Exhibit 7).

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## B. Margin of Error in Air Quality Testing

NDEP cannot determine for certain that an emission was over the limit giving rise to a fine, and therefore a penalty should only be assessed for a level at which NDEP can be certain. NDEP's air quality test is an NDEP employee's subjective view of the percent of pollution within the smoke stacks emitted from a source. The test administrator then determines the percent of opacity in that smoke stack. NDEP disclosed that this test generally carries a 5% margin of error, meaning that the actual percent of opacity is plus or minus 5% of the number generated from the test. The subjective nature of the test causing the margin of error creates uncertain results, and thus the corresponding penalties are arbitrary, capricious, and an abuse of discretion.

Each violation has a base penalty of \$1,000 that is multiplied based on how the percent opacity lines up to NDEP's penalty table. (See Exhibit 10). Between 20 - 29.99% opacity, there is a 1.5 multiplier; between 30 - 39.99% opacity there is a 2.5 multiplier. (See Exhibit 10). So, for example, a test might show a 31% opacity causing the fine to have a 2.5 multiplier, but NDEP can only accurately say that the actual opacity was between 26% - 36%. It is arbitrary, capricious, and an abuse of discretion to apply a larger multiplier when the test cannot definitely show that an opacity percentage was that high.

Notices of alleged violations No. 2621, 2622, and 2623 were due to TWA's alleged failure to comply with the emissions limit allowed in its permit. (See Exhibit 10). The emissions limit is 20% opacity, so anything above 20% is a violation of the Class II Air Quality Operating Permit. *Id.* First, No. 2621 claims that on April 25, 2017, TWA emitted air at 22.5% opacity. (See Exhibit 5). Second, No. 2622 claims that on April 27, 2017, TWA emitted air at 32.08% opacity. (See Exhibit 7). Third, No. 2623 claims that on April 28, 2017, TWA emitted air at 28.5% opacity. (See Exhibit 9).

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The margin of error means that at least one of TWA's violations should not have been issued at all, and the others should have been reduced according to an opacity percentage that NDEP can be certain of. Plus or minus 5%, No. 2621 is not above the emissions limit. Plus or minus 5%, No. 2622 is not in the range calling for a 2.5 multiplier. If this test is to be relied upon at all, the penalties assessed in No. 2621 and No. 2622 are arbitrary because the margin of error effectively reduces the percent opacity for which a source can be penalized for like TWA was. The lack of certainty in the testing creates arbitrary results, and TWA should not be penalized based on arbitrary results.

The Commission should adjust or reverse its penalties because the penalties were arbitrary in that TWA did not have notice to resolve the alleged violations before incurring additional violations. Also, the Commission should adjust or reverse its penalties because the margin of error for the emissions test further shows proof of the arbitrary nature of both the findings and the multipliers used to determine the penalty amounts.

#### **IV. Conclusion**

The Commission should reverse the penalties issued on September 22, 2017 because they were based on fraudulent misrepresentations, errors of law, arbitrary and capricious, and an abuse of discretion. TWA had an extension to conduct initial air quality tests, and performed those tests within the time extended to it. NDEP's independent testing that found TWA in violation of air quality standards had a margin of error so as to make those fines arbitrary and capricious. TWA was never in violation of NDEP standards, and therefore the penalties should be reversed. In sum:

- No. 2619 should be reversed because TWA had an extension to do initial tests.
- No. 2620 should be reversed because TWA had an extension to do initial tests.

- No. 2621 should be reversed because, plus or minus 5%, TWA did not fail its emissions test.
- No. 2622 should be reversed because TWA did not have corrective notice to prevent an additional violation. If not reversed, No. 2622 should be reduced to the penalty corresponding to plus or minus 5% of the test, and it should be reduced by the multiplier for previous violations given the lack of corrective notice.
- No. 2623 should be reversed because TWA did not have corrective notice to prevent an additional violation. If not reversed, No. 2623 should be reduced by the multiplier for previous violations given the lack of corrective notice.
- All penalties should be reversed because Mr. Osterhout's fraud on the Commission rendered the penalties clearly erroneous, arbitrary, capricious, and an abuse of discretion.

Exhibit List

1. Class II Air Quality Operating Permit
2. NDEP initial testing extension
3. Draft Notice of Alleged Violations No. 2619 and No. 2620
4. Notice of Alleged Violations No. 2619 and No. 2620
5. Draft Notice of Alleged Violations No. 2621
6. Notice of Alleged Violations No. 2621
7. Draft Notice of Alleged Violations No. 2622
8. Notice of Alleged Violations No. 2622
9. Notice of Alleged Violations No. 2623
10. SEC Penalty September 22, 2017
11. Declaration of Robert Matthews

## Exhibit List

1. Class II Air Quality Operating Permit
2. NDEP initial testing extension
3. Draft Notice of Alleged Violations No. 2619 and No. 2620
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7. Draft Notice of Alleged Violations No. 2622
8. Notice of Alleged Violations No. 2622
9. Notice of Alleged Violations No. 2623
10. SEC Penalty September 22, 2017
11. Declaration of Robert Matthews

**EXHIBIT 1**

**EXHIBIT 1**

Nevada Department of Conservation and Natural Resources • Division of Environmental Protection

**BUREAU OF AIR POLLUTION CONTROL**

901 SOUTH STEWART STREET SUITE 4001  
CARSON CITY, NEVADA 89701-5249

p: 775-687-9350 • [www.ndep.nv.gov/bapc](http://www.ndep.nv.gov/bapc) • f: 775-687-6396



**NDEP**

**Facility ID No. A1969**

**Permit No. AP1611-3748**

**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC (HEREINAFTER REFERRED TO AS PERMITTEE)  
Mailing Address: PO BOX 21645; CARSON CITY, NEVADA 89721  
Physical Address: 8013 US 50 EAST; CARSON CITY, NEVADA  
General Facility Location: 8013 US 50 EAST; CARSON CITY, NEVADA  
General Facility Location:

SECTION 1, T 15 N, R 20 E, MDB&M  
HA 104 – EAGLE VALLEY AREA/ CARSON CITY COUNTY  
NORTH 4,343.05 KM, EAST 268.52 KM, UTM ZONE 11

Emission Unit List:

**ASPHALT PLANT – MAIN OPERATING SCENARIO**

**A. System 01 – Asphalt Plant: Initial System Loading & Conveyance**

- PF1.001 Loader transfer to 4-compartment cold feed bins
- PF1.002 4-compartment cold feed bins transfer to collecting conveyor
- PF1.003 Collecting Conveyor transfer to Pugmill
- PF1.004 Pugmill transfer to incline conveyor
- PF1.005 Incline Conveyor transfer to Drum Dryer Mixer

**B. System 02 – Asphalt Plant: Drum Dryer Mixer/Burner**

- S.2.001 Asphalt Drum Dryer Mixer/Burner (Manufactured by Astec; Mfg. date 1984; Propane-fired Drum Dryer Burner, 76.4 MMBtu/hr)

**Ba. System 02a – Asphalt Plant: Drum Dryer Mixer/Burner (Alternate Operating Scenario)**

- S.2.001a Asphalt Drum Dryer Mixer/Burner (Manufactured by Astec; Mfg. date 1984; #2 Diesel-fired Drum Dryer Burner, 50.4 MMBtu/hr)

**C. System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance**

- PF1.006 Drum Dryer Mixer transfer to Slat Conveyor
- PF1.007 Slat Conveyor transfer to Surge Bin
- PF1.008 Surge Bin transfer to Truck

**D. System 04 – Lime Silo**

- S2.002 Lime Silo Loading
- PF1.009 Lime Silo Unloading to Pugmill via Screw Auger

**ASPHALT PLANT – ALTERNATE OPERATING SCENARIO**

**E. System 05 – Reclaimed Asphalt Pavement (RAP) System**

- PF1.010 Loader transfer to RAP bin
- PF1.011 RAP bin transfer to RAP collecting conveyor
- PF1.012 RAP collecting conveyor transfer to Drum Dryer Mixer

End of Emission Unit List



## BUREAU OF AIR POLLUTION CONTROL

**NDEP**

*Facility ID No. A1969*

*Permit No. AP 1611- 3748*

### CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

#### Section I. General Conditions

- A. Severability (Nevada Administrative Code (NAC) 445B.315.3(c))  
Each of the conditions and requirements of this Operating Permit is severable and, if any are held invalid, the remaining conditions and requirements continue in effect.
- B. Prohibited Acts (Nevada Revised Statute (NRS) 445B.470)  
Permittee shall not knowingly:
1. Violate any applicable provision, the terms or conditions of any permit or any provision for the filing of information;
  2. Fail to pay any fee;
  3. Falsify any material statement, representation or certification in any notice or report; or
  4. Render inaccurate any monitoring device or method, required pursuant to the provisions of NRS 445B.100 to 445B.450, inclusive, or 445B.470 to 445B.640, inclusive, or any regulation adopted pursuant to those provisions.
- C. Prohibited Conduct: Concealment of Emissions (NAC 445B.225)  
Permittee shall not install, construct, or use any device which conceals any emission without reducing the total release of regulated air pollutants to the atmosphere.
- D. Compliance/Noncompliance (NAC 445B.315.3(d))  
Permittee shall comply with all conditions of this Operating Permit. Any noncompliance constitutes a violation and its grounds for:
1. An action for noncompliance;
  2. Revising, revoking, reopening and revising, or terminating the Operating Permit; or
  3. Denial of an application for a renewal of the Operating Permit.
- E. NAC 445B.315.3(e)  
The need to halt or reduce activity to maintain compliance with the conditions of this Operating Permit is not a defense to noncompliance with any conditions of this Operating Permit.
- F. NAC 445B.315.3(f)  
The director may revise, revoke and reissue, reopen and revise, or terminate the operating permit for cause.
- G. NAC 445B.315.3(g)  
This Operating Permit does not convey any property rights or any exclusive privilege.
- H. NAC 445B.315.3(h)  
Permittee shall provide the Bureau of Air Pollution Control, within a reasonable time, with any information that the Bureau of Air Pollution Control requests in writing to determine whether cause exists for revising, revoking and reissuing, reopening and revising or terminating this Operating Permit or to determine compliance with the conditions of this Operating Permit.
- I. Fees (NAC 445B.315.3(i))  
Permittee shall pay fees to the Bureau of Air Pollution Control in accordance with the provisions set forth in NAC 445B.327 and 445B.331.
- J. Right to Entry (NAC 445B.315.3(j))  
Permittee shall allow the Bureau of Air Pollution Control personnel, upon the presentation of credentials, to:
1. Enter upon the premises of Permittee where:
    - a. The stationary source is located;
    - b. Activity related to emissions is conducted; or
    - c. Records are kept pursuant to the conditions of this Operating Permit;
  2. Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of this Operating Permit;
  3. Inspect, at reasonable times, any facilities, practices, operations, or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to this Operating Permit; and
  4. Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of this Operating Permit or applicable requirements.
- K. Certification (NAC 445B.315.3(k))  
A responsible official of Permittee shall certify that, based on information and belief formed after reasonable inquiry, the statements made in any document required to be submitted by any condition of this Operating Permit are true, accurate and complete.



Facility ID No. A1969

# BUREAU OF AIR POLLUTION CONTROL

Permit No. AP 1611- 3748

## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section I. General Conditions (continued)

**L. Testing and Sampling (NAC 445B.252)**

To determine compliance with NAC 445B.001 to 445B.3689, inclusive, before the approval or the continuance of an operating permit or similar class of permits, the director may either conduct or order the owner of any stationary source to conduct or have conducted such testing and sampling as the director determines necessary. Testing and sampling or either of them must be conducted and the results submitted to the director within 60 days after achieving the maximum rate of production at which the affected facility shall be operated, but not later than 180 days after initial startup of the facility and at such times as may be required by the director.

2. Tests of performance must be conducted and data reduced in accordance with the methods and procedures of the test contained in each applicable subsection of this section unless the director:
  - a. Specifies or approves, in specific cases, the use of a method of reference with minor changes in methodology;
  - b. Approves the use of an equivalent method;
  - c. Approves the use of an alternative method, the results of which he has determined to be adequate for indicating whether a specific stationary source is in compliance; or
  - d. Waives the requirement for tests of performance because the owner or operator of a stationary source has demonstrated by other means to the director's satisfaction that the affected facility is in compliance with the standard.
3. Tests of performance must be conducted under such conditions as the director specifies to the operator of the plant based on representative performance of the affected facility. The owner or operator shall make available to the director such records as may be necessary to determine the conditions of the performance test. Operations during periods of startup, shutdown and malfunction must not constitute representative conditions of a performance test unless otherwise specified in the applicable standard. (NAC 445B.252.3)
4. Permittee shall give notice to the director 30 days before the test of performance to allow the director to have an observer present. A written testing procedure for the test of performance must be submitted to the director at least 30 days before the test of performance to allow the director to review the proposed testing procedures. (NAC 445B.252.4)
5. Each test of performance must consist of at least three separate runs using the applicable method for that test. Each run must be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the runs apply. In the event of forced shutdown, failure of an irreplaceable portion of the sampling train, extreme meteorological conditions or other circumstances with less than three valid samples being obtained, compliance may be determined using the arithmetic mean of the results of the other two runs upon the director's approval. (NAC 445B.252.5)
6. All testing and sampling shall be performed in accordance with recognized methods and as specified by the director. (NAC 445B.252.6)
7. The cost of all testing and sampling and the cost of all sampling holes, scaffolding, electric power and other pertinent allied facilities as may be required and specified in writing by the director must be provided and paid for by the owner of the stationary source. (NAC 445B.252.7)
8. All information and analytical results of testing and sampling must be certified as to their truth and accuracy and as to their compliance with all provisions of NAC 445B.001 to 445B.3689, inclusive, and copies of these results must be provided to the director no later than 60 days after the testing or sampling, or both.
9. Notwithstanding the provisions of subsection 2, the Director shall not approve an alternative method or equivalent method to determine compliance with a standard or emission limitation contained in Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations for:
  - a. An emission unit that is subject to a testing requirement pursuant to Part 60, 61 or 63 of Title 40 of the Code of Federal Regulations; or
  - b. An affected source.

**M. Maximum Opacity of Emissions (NAC 445B.22017)**

1. Except as otherwise provided in this section and NAC 445B.2202, Permittee may not cause or permit the discharge into the atmosphere from any emission unit opacity equal to or greater than 20 percent. Opacity must be determined by one of the following methods:
  - a. If opacity is determined by a visual measurement, it must be determined as set forth in Reference Method 9 in Appendix A of 40 C.F.R. Part 60.
  - b. If a source uses a continuous monitoring system for the measurement of opacity, the data must be reduced to 6-minute averages as set forth in 40 CFR § 60.13(h).
2. The provisions of this section and NAC 445B.2202 do not apply to that part of the opacity that consists of uncombined water. The burden of proof to establish the application of this exemption is upon the person seeking to come within the exemption.

**N. Exceptions for Stationary Sources (NAC 445B.2202)**

The provisions of NAC 445B.22017 do not apply to:

1. Smoke from the open burning described in NAC 445B.22067;
2. Smoke discharged in the course of training air pollution control inspectors to observe visible emissions, if the facility has written approval of the commission;
3. Emissions from an incinerator as set forth in NAC 445B.2207;
4. Emissions of stationary diesel-powered engines during warm-up for not longer than 15 minutes to achieve operating temperatures.



## BUREAU OF AIR POLLUTION CONTROL

Facility ID No. A1969

Permit No. AP 1611- 3748

### CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

#### Section I. General Conditions (continued)

- O. Odors (NAC 445B.22087)  
Permittee may not discharge or cause to be discharged, from any stationary source, any material or regulated air pollutant which is or tends to be offensive to the senses, injurious or detrimental to health and safety, or which in any way interferes with or prevents comfortable enjoyment of life or property.
- P. Assertion of Emergency as Affirmative Defense to Action for Noncompliance (NAC 445B.326.1)  
Permittee may assert an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in the Operating Permit if the holder of the Operating Permit demonstrates through signed, contemporaneous operating logs or other relevant evidence that:
1. An emergency (as defined in NAC 445B.056) occurred and the holder of the Operating Permit can identify the cause of the emergency;
  2. The facility was being properly operated at the time of the emergency;
  3. During the emergency, the holder of the Operating Permit took all reasonable steps to minimize excess emissions; and
  4. Permittee submitted notice of the emergency to the director within 2 working days after the emergency. The notice must contain a description of the emergency, any steps taken to mitigate emissions, and any corrective actions taken to restore the normal operation of the facility.
  5. In any action for noncompliance, Permittee, by asserting the affirmative defense of any emergency, has the burden of proof.
- Q. Revocation and reissuance (NAC 445B.3265)
1. This Operating Permit may be revoked if the control equipment is not operating. (NAC 445B.3265.1)
  2. This Operating Permit may be revoked by the director upon determination that there has been a violation of NAC 445B.001 to 445B.3689, inclusive, or the provisions of 40 CFR § 52.21, or 40 C.F.R. Part 60 or 61, Prevention of Significant Deterioration, New Source Performance Standards, and National Emission Standards for Hazardous Air Pollutants adopted by reference in NAC 445B.221. (NAC 445B.3265.2)
  3. The revocation is effective 10 days after the service of a written notice, unless a hearing is requested. (NAC 445B.3265.3)

\*\*\*\*\*End of General Conditions\*\*\*\*\*



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Issued to: TAHOE WESTERN ASPHALT, LLC

**Section II. General Construction Conditions**

The following provisions apply to PF1.001 through PF1.012, S2.001 and S2.002.

A. NAC 445B.250 (State Only Requirement)

Notification

The Director shall be notified in writing of the following:

1. The date construction (or reconstruction as defined under NAC 445B.247) of the affected facility is commenced, postmarked no later than 30 days after such date.
2. The anticipated date of initial startup of an affected facility, postmarked no more than 60 days and no less than 30 days prior to such date.
3. The actual date of initial startup of the affected facility, postmarked within 15 days after such date.

\*\*\*\*\*End of General Construction Conditions\*\*\*\*\*



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## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section IIA. Specific Construction Requirements

A. Initial Performance Tests  
NAC 445B.22017; NAC 445B.252; NAC 445B.346.2

- The Permittee, after the date of issuance of this operating permit, shall conduct initial performance tests according to the schedule, and the test methods and procedures referenced in Table IIA-1 below:

Table IIA-1: Initial Performance Tests

System	Emission Unit(s)	Pollutants To Be Tested	Initial Testing Deadline	Testing Methods/Procedures
Systems 1 through 5	PF1.001 through PF1.012, S1.001, S2.001a and S2.002	Opacity	Within 60 days after achieving maximum production rate, but no later than 180 days after initial startup.	Reference Method 9 in Appendix A of 40 CFR Part 60. The minimum total time of observations shall be six minutes (24 consecutive observations recorded at 15-second intervals).
System 2	S2.001	PM, PM10, PM2.5	Within 60 days after achieving maximum production rate, but no later than 180 days after initial startup.	See Section V.B.4.c. of this operating permit for Initial Performance Testing

- Tests of performance, as specified in Table IIA-1 above, must be conducted under such conditions as the Director specifies to the operator of the plant based on representative performance of the affected facility. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the test of performance. Operations during periods of startup, shutdown and malfunction must not constitute representative conditions of a test of performance unless otherwise specified in the applicable standard. (NAC 445B.252.3)
- The Permittee shall provide notification of the anticipated date for conducting the initial performance tests required in Table IIA-1 above. The notification shall be postmarked not less than 30 days prior to such date; and include all equipment manufacturers, equipment model numbers, serial numbers and manufacturing year.
- Within 60 days after completing the initial performance tests required in Table IIA-1 above, the Permittee shall furnish the Director a written report of the results of the performance tests. All information and analytical results of testing and sampling must be certified as to the truth and accuracy and as to their compliance with NAC 445B.001 to 445B.3689, inclusive. (NAC 445B.252.8)
- The Permittee shall comply with the requirements of Section LL.3 through LL.8 for all performance testing.

\*\*\*\*\*End of Specific Construction Requirements\*\*\*\*\*



**NDEP**

**Facility ID No. A1969**

**BUREAU OF AIR POLLUTION CONTROL**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section III. General Operating Conditions**

- A. Facilities Operation (NAC 445B.227)  
Permittee may not:
1. Operate a stationary source of air pollution unless the control equipment for air pollution which is required by applicable requirements or conditions of this Operating Permit is installed and operating.
  2. Disconnect, alter, modify or remove any of the control equipment for air pollution or modify any procedure required by an applicable requirement or condition of this Operating Permit.
- B. Excess Emissions (NAC 445B.232; NAC 445B.346.2)
1. Scheduled maintenance or testing or scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3689, inclusive, must be approved by the director and performed during a time designated by the director as being favorable for atmospheric ventilation.
  2. The director must be notified in writing of the time and expected duration at least 24 hours in advance of any scheduled maintenance which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3689, inclusive.
  3. The director must be notified in writing or by telephone of the time and expected duration at least 24 hours in advance of any scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by NAC 445B.001 to 445B.3689, inclusive.
  4. The director must be notified of any excess emissions within 24 hours after any malfunction or upset of the process equipment or equipment for controlling pollution or during startup or shutdown of such equipment. Email to [ecnotify@ndep.nv.gov](mailto:ecnotify@ndep.nv.gov).
  5. Permittee, as the owner or operator of an affected facility, shall provide the director, within 15 days after any malfunction, upset, startup, shutdown, or human error which results in excess emissions, sufficient information to enable the director to determine the seriousness of the excess emissions. The information must include at least the following:
    - a. The identity of the stack or other point of emission, or both, where the excess emissions occurred.
    - b. The estimated magnitude of the excess emissions expressed in opacity or in units of the applicable limitation on emission and the operating data and methods used in estimating the magnitude of the excess emissions.
    - c. The time and duration of the excess emissions.
    - d. The identity of the equipment causing the excess emissions.
    - e. If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunction.
    - f. The steps taken to limit the excess emissions.
    - g. Documentation that the equipment for controlling air pollution, process equipment, or processes were at all times maintained and operated, to a maximum extent practicable, in a manner consistent with good practice for minimizing emissions.
- C. Permit Revision (NAC 445B.287.1.b)  
A revision of this operating permit is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

\*\*\*\*\*End of General Operating Conditions\*\*\*\*\*



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**Section IV. General Monitoring and Recordkeeping**

- A. Records Retention (NAC 445B.315.3(b))  
Permittee shall retain records of all required monitoring data and supporting information for 5 years from the date of the sample collection, measurement, report or analysis. Supporting information includes, but is not limited to, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation.
- B. Reporting (NAC 445B.346.3)  
Permittee shall promptly report to the director any deviations from the requirements of this Operating Permit. The report to the director shall include the probable cause of all deviations and any action taken to correct the deviations. For this Operating Permit, prompt is defined as submittal of a report within 15 days of the deviation. This definition does not alter any reporting requirements as established for reporting of excess emissions as required under NAC 445B.232 and under condition III.B of this permit.
- C. Yearly Reports (NAC 445B.315.3(h), NAC 445B.346.2)  
Permittee shall submit yearly reports including, but not limited to, throughput, production, fuel consumption, hours of operation, and emissions. These reports shall be submitted on the form provided by the Bureau of Air Pollution Control for all emission units/systems specified on the form. The completed form must be submitted to the Bureau of Air Pollution Control no later than March 1 annually for the preceding calendar year.

\*\*\*\*\*End of General Monitoring and Recordkeeping Conditions\*\*\*\*\*



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## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section V. Specific Operating Conditions (continued)

**A. Emission Units PF1.001 through PF1.005**

- PF1.001 Location: North 4,343.093 km, East 268.533 km, UTM (Zone 11, NAD 83)
- PF1.002 Location: North 4,343.093 km, East 268.533 km, UTM (Zone 11, NAD 83)
- PF1.003 Location: North 4,343.071 km, East 268.533 km, UTM (Zone 11, NAD 83)
- PF1.004 Location: North 4,343.068 km, East 268.533 km, UTM (Zone 11, NAD 83)
- PF1.005 Location: North 4,343.057 km, East 268.533 km, UTM (Zone 11, NAD 83)

A. System 01 - Asphalt Plant: Initial System Loading & Conveyance	
PF1.001	Loader transfer to 4-compartment cold feed bins
PF1.002	4-compartment cold feed bins transfer to collecting conveyor
PF1.003	Collecting Conveyor transfer to Pugmill
PF1.004	Pugmill transfer to incline conveyor
PF1.005	Incline Conveyor transfer to Drum Dryer Mixer

1. Air Pollution Control Equipment (NAC 445B.346.1)  
PF1.001 through PF1.005 each, have no add-on controls.
2. Emission Limits (NAC 445B.305; NAC 445B.346.1)
  - a. On and after the date of startup of PF1.001 through PF1.005 each, Permittee shall not discharge or cause the discharge into the atmosphere the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 0.77 pound per hour, nor more than 0.23 ton per year, each.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 0.28 pound per hour, nor more than 0.08 ton per year, each.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 0.04 pound per hour, nor more than 0.01 ton per year, each.
    - (4) The opacity from PF1.001 through PF1.005 each, shall not equal or exceed 20 percent in accordance with NAC 445B.22017.
3. Operating Parameters (NAC 445B.346.1)
  - a. The maximum allowable throughput rate for PF1.001 through PF1.005 each, shall not exceed 255.0 tons of aggregate per any one-hour period, nor more than 150,000 tons per year.
  - b. Hours
    - (1) PF1.001 through PF1.005 each, shall not operate in excess of 11 hours per day.
    - (2) PF1.001 through PF1.005 each, shall not operate in excess of 3,000 hours per calendar year.
4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)
  - a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:
    - (1) Monitor and record the total daily throughput rate of aggregate for System 1 at PF1.001 on each day of operation. Monitoring and recording the throughput rate at PF1.001 shall be representative of monitoring and recording the throughput rate for System 1.
    - (2) Monitor and record the total daily hours of operation for System 1 at PF1.001 on each day of operation. Monitoring and recording the total daily hours of operation at PF1.001 shall be representative of monitoring and recording the total daily hours of operation for System 1.
    - (3) Record the average hourly throughput rate in tons per hour. The average hourly throughput rate shall be determined by dividing the total daily throughput rate as recorded in 4.a.(1) of this section, by the total daily hours of operation as recorded in 4.a.(2) of this section. Monitoring and recording the average hourly throughput rate at PF1.001 shall be representative of monitoring and recording the average hourly throughput rates for System 1.
    - (4) Record the monthly throughput rate in tons per calendar month, and the corresponding annual throughput rate in tons per calendar year. The monthly throughput rate shall be determined at the end of each calendar month as the sum of each total daily throughput rate as determined in 4.a.(1) of this section for each operating day of the calendar month. The annual throughput rate shall be determined as the sum of the monthly throughput rates for the calendar year.
    - (5) Record the monthly hours of operation, and the corresponding sum of hours of operation for the calendar year. The monthly hours of operation shall be determined at the end of each calendar month as the sum of daily hours of operation as determined in 4.a.(2) of this section for each operating day of the calendar month. The annual hours of operation shall be determined as the sum of the monthly operating hours for the calendar year.
  - b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring:
    - (1) Conduct and record an observation of visible emissions (excluding water vapor) on PF1.001 through PF1.005 each, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.



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## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section V. Specific Operating Conditions (continued)

Location North 4,343,071 km, East 268,511 km, UTM (Zone 11, NAD 83)

#### B. Emission Unit S2.001

B. System 02 - Asphalt Plant: Drum Dryer Mixer/Burner  
S.2.001 Asphalt Drum Dryer Mixer/Burner (Manufactured by Astec; Mfg. date 1984; Propane-fired Drum Dryer Burner, 76.4 MMBtu/hr)

1. Air Pollution Control Equipment (NAC 445B.346.1)
  - a. Emissions from S2.001 shall be ducted to a control system consisting of a Baghouse with 100% capture and a maximum volume flow rate of 16,000 dry standard cubic feet per minute (dscfm).
  - b. Descriptive Stack Parameters for the Baghouse for S2.001
    - (1) Stack height: 20 feet
    - (2) Stack inside diameter: 3.17 feet
    - (3) Stack temperature: 278 °F
  
2. Emission Limits (NAC 445B.305; NAC 445B.346.1)
  - a. On and after the date of startup of S2.001, Permittee shall not discharge or cause the discharge into the atmosphere from the exhaust stack of the Baghouse, the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 8.23 tons per year.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 8.23 tons per year.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 8.23 tons per year.
    - (4) The discharge of nitrogen oxides (NO<sub>x</sub>) to the atmosphere shall not exceed 7.15 pounds per hour, nor more than 1.95 tons per year.
    - (5) The discharge of sulfur dioxide (SO<sub>2</sub>) to the atmosphere shall not exceed 0.94 pound per hour, nor more than 0.26 ton per year.
    - (6) The discharge of carbon monoxide (CO) to the atmosphere shall not exceed 35.75 pounds per hour, nor more than 9.75 tons per year.
    - (7) The discharge of volatile organic compounds (VOC) to the atmosphere shall not exceed 8.80 pounds per hour, nor more than 2.40 tons per year.
  - b. The opacity from the exhaust stack of the Baghouse shall not equal or exceed 20 percent in accordance with NAC 445B.22017. New Source Performance Standards - Subpart 1 - Standards of Performance for Hot Mix Asphalt Facilities (40 CFR Part 60.92)  
On and after the date on which the performance test required to be conducted is completed, Permittee shall not discharge or cause the discharge into the atmosphere from the Baghouse, the following pollutants in excess of the following specified limits:
    - (1) Emissions of particulate matter in excess of 90 mg/dscm (0.04 grain per dry standard cubic foot). (40 CFR Part 60.92.(a)(1))
    - (2) Emissions that exhibit 20 percent opacity, or greater. (40 CFR Part 60.92(a)(2))
    - (3) The opacity standard set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction. (40 CFR Part 60.11(c))
    - (4) At all times, including periods of startup, shutdown, and malfunction, Permittee shall, to the extent practicable, maintain and operate S2.001 including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. (40 CFR Part 60.11(d))
  
3. Operating Parameters (NAC 445B.346.1)
  - a. The maximum allowable throughput rate for S2.001 shall not exceed 275.0 tons of aggregate per any one-hour period, nor more than 150,000 tons per year.
  - b. S2.001 may combust only liquid propane gas (Propane) as fuel.
  - c. The maximum allowable fuel consumption rate of Propane for S2.001 shall not exceed 835.0 gallons per any one-hour period, nor more than 2,505,000 gallons per year.
  - d. Hours
    - (1) S2.001 shall not operate in excess of 11 hours per day.
    - (2) S2.001 shall not operate in excess of 3,000 hours per calendar year.



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Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

**B. Emission Unit S2.001 (continued)**

**4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)**

a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in 4.a. and b. of this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the shift, end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:

- (1) Monitor and record the total daily throughput rate of aggregate for S2.001 on each day of operation.
- (2) Record the consumption of propane for S2.001 on each day of operation.
- (3) Record the hours of operation for S2.001 on each day of operation.
- (4) Record the average hourly throughput rate in tons per hour. The average hourly throughput rate shall be determined by dividing the total daily throughput rate as recorded in 4.a.(1) of this section, by the total daily hours of operation as recorded in 4.a.(3) of this section.
- (5) Record the average hourly propane consumption rate in gallons per hour for S2.001. The average hourly propane consumption rate shall be determined by dividing the total daily propane consumption rate as recorded in 4.a.(2) of this section, by the total daily hours of operation as recorded in 4.a.(3) of this section.
- (6) Record the monthly throughput rate in tons per calendar month, and the corresponding annual throughput rate in tons per calendar year. The monthly throughput rate shall be determined at the end of each calendar month as the sum of each total daily throughput rate as determined in 4.a.(1) of this section for each operating day of the calendar month. The annual throughput rate shall be determined as the sum of the monthly throughput rates for the calendar year.
- (7) Record the monthly propane consumption rate in gallons per calendar month, and the corresponding annual propane consumption rate in gallons per calendar year. The monthly propane consumption rate shall be determined at the end of each calendar month as the sum of each total daily propane consumption rate as determined in 4.a.(2) of this section for each operating day of the calendar month. The annual propane consumption rate shall be determined as the sum of the monthly propane consumption rates for the calendar year.
- (8) Record the monthly hours of operation, and the corresponding sum of hours of operation for the calendar year. The monthly hours of operation shall be determined at the end of each calendar month as the sum of daily hours of operation as determined in 4.a.(3) of this section for each operating day of the calendar month. The annual hours of operation shall be determined as the sum of the monthly operating hours for the calendar year.

b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring:

- (1) Conduct and record an observation of visible emissions (excluding water vapor) on the exhaust stack of the Baghouse for S2.001, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.



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## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section V. Specific Operating Conditions (continued)

B. Emission Unit S2.001 (continued)

4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2) (Continued)

c. Performance/Compliance Testing (NAC 445B.252.1)

All performance or compliance tests must comply with the advance notification, protocol approval, operational conditions, reporting, and other requirements of Section 1.L Testing and Sampling (NAC 445B.252) of this Operating Permit. Material sampling must be conducted in accordance with protocols approved by the Director. All test results shall be based on the arithmetic average of three valid runs (NAC 445B.252(5)).

- (1) Testing shall be conducted at least 90 days prior to the date of expiration of this permit, but no earlier than 365 days from the date of expiration of this permit.
  - (2) Testing shall be conducted on the exhaust stack (post controls), and shall consist of three valid runs.
  - (3) Method 5 in Appendix A of 40 CFR Part 60, as required in 40 CFR Part 60.93(b)(1), and Method 202 in Appendix M of 40 CFR Part 51, shall be used to determine total particulate matter (PM) emissions. The sample volume for each test run shall be at least 1.7 dscm (60 dscf). Test runs must be conducted for up to two hours in an effort to collect this minimum sample.
  - (4) Method 201 A and Method 202 in Appendix M of 40 CFR Part 51 shall be used to determine PM<sub>10</sub> and PM<sub>2.5</sub> emissions. The sample time and sample volume collected for each test run shall be sufficient to collect enough mass to weigh accurately.
  - (5) The Method 201 A and 202 test required in this section may be replaced by a Method 5 in Appendix A of 40 CFR Part 60 and Method 202 in Appendix M of 40 CFR Part 51 test. All particulate captured in the Method 5 and Method 202 test performed under this provision shall be considered PM<sub>2.5</sub> for determination of compliance.
  - (6) Method 9 in Appendix A of 40 CFR Part 60, as required in 40 CFR Part 60.93 (b)(2), shall be used to determine opacity. Opacity observations shall be conducted concurrently with the applicable performance test. The minimum total time of observations shall be six minutes (24 consecutive observations recorded at 15 second intervals), unless otherwise specified by an applicable subpart.
- d. New Source Performance Standards (NSPS) - Notification and Record Keeping (40 CFR Part 60.7(b))
- Permittee, upon the issuance date of this permit shall:
- (1) Maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.



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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

Ba. Emission Unit S2.001a

Location North 4,343.071 km, East 268.511 km, UTM (Zone 11, NAD 83)

**Ba. System 02a – Asphalt Plant: Drum Dryer Mixer/Burner (Alternate Operating Scenario)**

**S.2.001a Asphalt Drum Dryer Mixer/Burner (Manufactured by Astec; Mfg. date 1984; #2 Diesel-fired Drum Dryer Burner, 50.4 MMBtu/hr)**

**1. Air Pollution Control Equipment (NAC 445B.346.1)**

a. Emissions from S2.001a shall be ducted to a control system consisting of a Baghouse with 100% capture and a maximum volume flow rate of 16,000 dry standard cubic feet per minute (dscfm).

b. Descriptive Stack Parameters for the Baghouse for S2.001a

- (1) Stack height: 20 feet
- (2) Stack inside diameter: 3.17 feet
- (3) Stack temperature: 278 °F

**2. Emission Limits (NAC 445B.305; NAC 445B.346.1)**

a. On and after the date of startup of S2.001a, Permittee shall not discharge or cause the discharge into the atmosphere from the exhaust stack of the Baghouse, the following pollutants in excess of the following specified limits:

- (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 2.11 tons per year.
- (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 2.11 tons per year.
- (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 5.49 pounds per hour, nor more than 2.11 tons per year.
- (4) The discharge of nitrogen oxides (NO<sub>x</sub>) to the atmosphere shall not exceed 15.13 pounds per hour, nor more than 1.38 tons per year.
- (5) The discharge of sulfur dioxide (SO<sub>2</sub>) to the atmosphere shall not exceed 3.03 pounds per hour, nor more than 0.28 ton per year.
- (6) The discharge of carbon monoxide (CO) to the atmosphere shall not exceed 35.75 pounds per hour, nor more than 3.25 tons per year.
- (7) The discharge of volatile organic compounds (VOC) to the atmosphere shall not exceed 8.80 pounds per hour, nor more than 0.80 ton per year.

(8) The opacity from the exhaust stack of the Baghouse shall not equal or exceed 20 percent in accordance with NAC 445B.22017.

b. New Source Performance Standards - Subpart I - Standards of Performance for Hot Mix Asphalt Facilities (40 CFR Part 60.92)

On and after the date on which the performance test required to be conducted is completed, Permittee shall not discharge or cause the discharge into the atmosphere from the Baghouse, the following pollutants in excess of the following specified limits:

- (1) Emissions of particulate matter in excess of 90 mg/dscm (0.04 grain per dry standard cubic foot). (40 CFR Part 60.92.(a)(1))
- (2) Emissions that exhibit 20 percent opacity, or greater. (40 CFR Part 60.92(a)(2))
- (3) The opacity standard set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction. (40 CFR Part 60.11(c))
- (4) At all times, including periods of startup, shutdown, and malfunction, Permittee shall, to the extent practicable, maintain and operate S2.001a including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. (40 CFR Part 60.11(d))

**3. Operating Parameters (NAC 445B.346.1)**

a. The maximum allowable throughput rate for S2.001a shall not exceed 275.0 tons of aggregate per any one-hour period, nor more than 50,000 tons per year under this alternate operating scenario.

b. S2.001a may combust only #2 diesel as fuel under this alternate operating scenario.

c. The maximum allowable fuel consumption rate of #2 diesel for S2.001a shall not exceed 360.0 gallons per any one-hour period, nor more than 277,200 gallons per year under this alternate operating scenario.

d. Hours

- (1) S2.001a shall not operate in excess of 11 hours per day.
- (2) S2.001a shall not operate in excess of 770 hours per calendar year under this alternate operating scenario.
- (3) S2.001a shall not operate after August 8, 2016.



**BUREAU OF AIR POLLUTION CONTROL**

**Facility ID No. A1969**

**Permit No. AP 1611- 3748**

**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

**Ba. Emission Unit S2.001a (continued)**

**4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)**

- a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in 4.a. and b. of this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the shift, end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:
- (1) Monitor and record the total daily throughput rate of aggregate for S2.001a on each day of operation.
  - (2) Record the consumption of #2 diesel for S2.001a on each day of operation.
  - (3) Record the hours of operation for S2.001a on each day of operation.
  - (4) Record the average hourly throughput rate in tons per hour. The average hourly throughput rate shall be determined by dividing the total daily throughput rate as recorded in 4.a.(1) of this section, by the total daily hours of operation as recorded in 4.a.(3) of this section.
  - (5) Record the average hourly #2 diesel fuel consumption rate in gallons per hour for S2.001a. The average hourly #2 diesel fuel consumption rate shall be determined by dividing the total daily #2 diesel fuel consumption rate as recorded in 4.a.(2) of this section, by the total daily hours of operation as recorded in 4.a.(3) of this section.
  - (6) Record the monthly throughput rate in tons per calendar month, and the corresponding annual throughput rate in tons per calendar year. The monthly throughput rate shall be determined at the end of each calendar month as the sum of each total daily throughput rate as determined in 4.a.(1) of this section for each operating day of the calendar month. The annual throughput rate shall be determined as the sum of the monthly throughput rates for the calendar year.
  - (7) Record the monthly #2 diesel fuel consumption rate in gallons per calendar month, and the corresponding annual #2 diesel fuel consumption rate in gallons per calendar year. The monthly #2 diesel fuel consumption rate shall be determined at the end of each calendar month as the sum of each total daily #2 diesel fuel consumption rate as determined in 4.a.(2) of this section for each operating day of the calendar month. The annual #2 diesel fuel consumption rate shall be determined as the sum of the monthly propane consumption rates for the calendar year.
  - (8) Record the monthly hours of operation, and the corresponding sum of hours of operation for the calendar year. The monthly hours of operation shall be determined at the end of each calendar month as the sum of daily hours of operation as determined in 4.a.(3) of this section for each operating day of the calendar month. The annual hours of operation shall be determined as the sum of the monthly operating hours for the calendar year.
- b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring:
- (1) Conduct and record an observation of visible emissions (excluding water vapor) on the exhaust stack of the Baghouse for S2.001a, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.



## BUREAU OF AIR POLLUTION CONTROL

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### CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

#### Section V. Specific Operating Conditions (continued)

**C. Emission Units PF1.006 through PF1.008**

PF1.006 Location: North 4,343,055 km, East 268,528 km, UTM (Zone 11, NAD 83)

PF1.007 and PF1.008 Location: North 4,343,037 km, East 268,528 km, UTM (Zone 11, NAD 83)

**C. System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance**

PF1.006 Drum Dryer Mixer transfer to Slat Conveyor

PF1.007 Slat Conveyor transfer to Surge Bin

PF1.008 Surge Bin transfer to Truck

1. Air Pollution Control Equipment (NAC 445B.346.1)  
PF1.006 through PF1.008 each, have no add-on controls.
2. Emission Limits (NAC 445B.305; NAC 445B.346.1)
  - a. On and after the date of startup of PF1.006 through PF1.008 each, Permittee shall not discharge or cause the discharge into the atmosphere the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 0.14 pound per hour, nor more than 0.04 ton per year, each.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 0.14 pound per hour, nor more than 0.04 ton per year, each.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 0.14 pound per hour, nor more than 0.04 ton per year, each.
    - (4) The discharge of carbon monoxide (CO) to the atmosphere shall not exceed 0.37 pound per hour, nor more than 0.10 ton per year, each.
    - (5) The discharge of volatile organic compounds (VOC) to the atmosphere shall not exceed 1.14 pounds per hour, nor more than 0.31 ton per year, each.
    - (6) The opacity from PF1.006 through PF1.008 each, shall not equal or exceed 20 percent in accordance with NAC 445B.22017.
  - b. New Source Performance Standards - Subpart 1 - Standards of Performance for Hot Mix Asphalt Facilities (40 CFR Part 60.92)  
On and after the date on which the performance test required to be conducted is completed, Permittee shall not discharge or cause the discharge into the atmosphere from PF1.006 through PF1.008 each, the following pollutants in excess of the following specified limits:
    - (1) Emissions that exhibit 20 percent opacity, or greater. (40 CFR Part 60.92(a)(2))
    - (2) The opacity standard set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction. (40 CFR Part 60.11(e))
    - (3) At all times, including periods of startup, shutdown, and malfunction, Permittee shall, to the extent practicable, maintain and operate PF1.006 through PF1.008 each, including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. (40 CFR Part 60.11(d))
3. Operating Parameters (NAC 445B.346.1)
  - a. The maximum allowable throughput rate for PF1.006 through PF1.008 each, shall not exceed 275.0 tons of asphalt mix per any one-hour period, nor more than 150,000 tons per year.
  - b. Hours
    - (1) PF1.006 through PF1.008 each, shall not operate in excess of 11 hours per day.
    - (2) PF1.006 through PF1.008 each, shall not operate in excess of 3,000 hours per calendar year.



**BUREAU OF AIR POLLUTION CONTROL**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

**C. Emission Units PF1.006 through PF1.008 (Continued)**

**4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)**

- a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:
- (1) Monitor and record the total daily throughput rate of aggregate for System 3 at PF1.006 on each day of operation. Monitoring and recording the throughput rate at PF1.006 shall be representative of monitoring and recording the throughput rate for System 3.
  - (2). Monitor and record the total daily hours of operation for System 3 at PF1.006 on each day of operation. Monitoring and recording the total daily hours of operation at PF1.006 shall be representative of monitoring and recording the total daily hours of operation for System 3.
  - (3) Record the average hourly throughput rate in tons per hour. The average hourly throughput rate shall be determined by dividing the total daily throughput rate as recorded in 4.a.(1) of this section, by the total daily hours of operation as recorded in 4.a.(2) of this section. Monitoring and recording the average hourly throughput rate at PF1.006 shall be representative of monitoring and recording the average hourly throughput rate for System 3.
  - (4) Record the monthly throughput rate in tons per calendar month, and the corresponding annual throughput rate in tons per calendar year. The monthly throughput rate shall be determined at the end of each calendar month as the sum of each total daily throughput rate as determined in 4.a.(1) of this section for each operating day of the calendar month. The annual throughput rate shall be determined as the sum of the monthly throughput rates for the calendar year.
  - (5) Record the monthly hours of operation, and the corresponding sum of hours of operation for the calendar year. The monthly hours of operation shall be determined at the end of each calendar month as the sum of daily hours of operation as determined in 4.a.(2) of this section for each operating day of the calendar month. The annual hours of operation shall be determined as the sum of the monthly operating hours for the calendar year.
- b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring.
- (1) Conduct and record an observation of visible emissions (excluding water vapor) on PF1.006 through PF1.008 each, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.



# BUREAU OF AIR POLLUTION CONTROL

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## CLASS II AIR QUALITY OPERATING PERMIT

Issued to: TAHOE WESTERN ASPHALT, LLC

### Section V. Specific Operating Conditions (continued)

D. Emission Units S2.002 and PF1.009

S2.002 Location: North 4,343.069 km. East 268.539 km. UTM (Zone 11, NAD 83)

PF1.009 Location: North 4,343.069 km. East 268.535 km. UTM (Zone 11, NAD 83)

D. System 04 - Lime Silo

S2.002 Lime Silo Loading

PF1.009 Lime Silo Unloading to Pugmill via Screw Auger.

1. Air Pollution Control Equipment (NAC 445B.346.1)  
PF1.009 has no add-on controls.  
Emissions from S2.002 shall be controlled by a bin vent filter.  
Descriptive Stack Parameters for the bin vent filter for S2.002
  - a. Stack height: 45 feet
  - b. Stack inside diameter: 2.0 feet
  - c. Stack temperature: Ambient
2. Emission Limits (NAC 445B.305; NAC 445B.346.1)
  - a. On and after the date of startup of PF1.009, Permittee shall not discharge or cause the discharge into the atmosphere from PF1.009, the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 0.02 pound per hour, nor more than 0.03 ton per year.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 0.01 pound per hour, nor more than 0.02 ton per year.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 0.002 pound per hour, nor more than 0.003 ton per year.
    - (4) The opacity from PF1.009 shall not equal or exceed 20 percent in accordance with NAC 445B.22017.
  - b. On and after the date of startup of S2.002, Permittee shall not discharge or cause the discharge into the atmosphere from the exhaust stack of the bin vent filter for S2.002, the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 0.22 pound per hour, nor more than 0.23 ton per year.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 0.12 pound per hour, nor more than 0.13 ton per year.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 0.02 pound per hour, nor more than 0.03 ton per year.
    - (4) The opacity from the exhaust stack of the bin vent filter for S2.002 shall not equal or exceed 20 percent in accordance with NAC 445B.22017.
3. Operating Parameters (NAC 445B.346.1)
  - a. The maximum allowable loading rate for S2.002 shall not exceed 25.0 tons of lime per any one-hour period, nor more than 52,000 tons per year.
  - b. The maximum allowable unloading rate for PF1.009 shall not exceed 4.0 tons of lime per any one-hour period, nor more than 12,000 tons per year.
  - c. Hours
    - (1) S2.002 shall not operate in excess of 8 hours per day.
    - (2) S2.002 shall not operate in excess of 2,080 hours per calendar year.
    - (3) PF1.009 shall not operate in excess of 11 hours per day.
    - (4) PF1.009 shall not operate in excess of 3,000 hours per calendar year.



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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

**D. Emission Units S2.002 and PF1.009 (Continued)**

**4. Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)**

- a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in 4.a. and b. of this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the shift, end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:
- (1) Record the loading of lime for S2.002 on each day of operation.
  - (2) Record the unloading of lime for PF1.009 on each day of operation.
  - (3) Record the daily hours of operation for S2.001 and PF1.009 for each day of operation.
  - (4) Record the average hourly loading rate in tons per hour for S2.002. The average hourly loading rate shall be determined by dividing the total daily loading rate as recorded in 4.a.(1) of this section by the total daily hours of operation as recorded in 4.a.(3) of this section.
  - (5) Record the average hourly unloading rate in tons per hour for PF1.009. The average hourly unloading rate shall be determined by dividing the total daily unloading rate as recorded in 4.a.(2) of this section by the total daily hours of operation as recorded in 4.a.(3) of this section.
  - (6) Record the monthly and year-to-date hours of operation on the final day of operation of each month for S2.002 and PF1.009 each. The monthly hours of operation shall be determined as the sum of daily hours of operation as recorded in 4.a.(3) of this section for each day of the calendar month. The year-to-date hours shall be determined as the sum of monthly hours for the current and all prior calendar months of the calendar year.
  - (7) The monthly loading rate in tons per calendar month, and the corresponding annual loading rate in tons per calendar year. The monthly loading rate shall be determined at the end of each calendar month as the sum of each total daily loading rate as determined in 4.a.(1) of this section for each day of the calendar month. The annual loading rate shall be determined as the sum of the monthly loading rates for the calendar year.
  - (8) The monthly unloading rate in tons per calendar month, and the corresponding annual unloading rate in tons per calendar year. The monthly unloading rate shall be determined at the end of each calendar month as the sum of each total daily unloading rate as determined in 4.a.(2) of this section for each day of the calendar month. The annual unloading rate shall be determined as the sum of the monthly unloading rates for the calendar year.
- b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring.
- (1) Conduct and record an observation of visible emissions (excluding water vapor) on the exhaust stack of the bin vent filter for S2.002 and PF1.009 each, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.



**BUREAU OF AIR POLLUTION CONTROL**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section V. Specific Operating Conditions (continued)**

**E. Emission Units PF1.010 through PF1.012**

PF1.010 Location: North 4,343.075 km, East 268.526 km, UTM (Zone 11, NAD 83)

PF1.011 Location: North 4,343.075 km, East 268.525 km, UTM (Zone 11, NAD 83)

PF1.012 Location: North 4,343.057 km, East 268.526 km, UTM (Zone 11, NAD 83)

**E. System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 1)**

PF1.010	Loader transfer to RAP bin
PF1.011	RAP bin transfer to RAP collecting conveyor
PF1.012	RAP collecting conveyor transfer to Drum Dryer Mixer

1. **Air Pollution Control Equipment (NAC 445B.346.1)**  
PF1.010 through PF1.012 each, have no add-on controls.
2. **Emission Limits (NAC 445B.305; NAC 445B.346.1)**
  - a. On and after the date of startup of PF1.010 through PF1.012 each, Permittee shall not discharge or cause the discharge into the atmosphere the following pollutants in excess of the following specified limits:
    - (1) The discharge of particulate matter (PM) to the atmosphere shall not exceed 0.17 pound per hour, nor more than 0.08 ton per year, each.
    - (2) The discharge of particulate matter less than 10 microns in diameter (PM<sub>10</sub>) to the atmosphere shall not exceed 0.06 pound per hour, nor more than 0.03 ton per year, each.
    - (3) The discharge of particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>) to the atmosphere shall not exceed 0.01 pound per hour, nor more than 0.004 ton per year, each.
    - (4) The opacity from PF1.010 through PF1.012 each, shall not equal or exceed 20 percent in accordance with NAC 445B.22017.
3. **Operating Parameters (NAC 445B.346.1)**
  - a. The maximum allowable throughput rate for PF1.010 through PF1.012 each, shall not exceed 55.0 tons of reclaimed asphalt per any one-hour period, nor more than 50,000 tons per year.
  - b. **Hours**
    - (1) PF1.010 through PF1.012 each, shall not operate in excess of 11 hours per day.
    - (2) PF1.010 through PF1.012 each, shall not operate in excess of 3,000 hours per calendar year.
4. **Monitoring, Testing, Recordkeeping and Reporting (NAC 445B.346.2)**
  - a. Upon the issuance date of this permit, Permittee shall maintain, in a contemporaneous log, the monitoring and recordkeeping specified in this section. All records in the log must be identified with the calendar date of the record. All specified records shall be entered into the log at the end of the day of operation, or the end of the final day of operation for the month, as appropriate. Permittee shall:
    - (1) Monitor and record the total daily throughput rate of aggregate for System 5 at PF1.010 on each day of operation. Monitoring and recording the throughput rate at PF1.010 shall be representative of monitoring and recording the throughput rate for System 5.
    - (2) Monitor and record the total daily hours of operation for System 5 at PF1.010 on each day of operation. Monitoring and recording the total daily hours of operation at PF1.010 shall be representative of monitoring and recording the total daily hours of operation for System 5.
    - (3) Record the average hourly throughput rate in tons per hour. The average hourly throughput rate shall be determined by dividing the total daily throughput rate as recorded in 4.a.(1) of this section, by the total daily hours of operation as recorded in 4.a.(2) of this section. Monitoring and recording the average hourly throughput rate at PF1.010 shall be representative of monitoring and recording the average hourly throughput rate for System 5.
    - (4) Record the monthly throughput rate in tons per calendar month, and the corresponding annual throughput rate in tons per calendar year. The monthly throughput rate shall be determined at the end of each calendar month as the sum of each total daily throughput rate as determined in 4.a.(1) of this section for each operating day of the calendar month. The annual throughput rate shall be determined as the sum of the monthly throughput rates for the calendar year.
    - (5) Record the monthly hours of operation, and the corresponding sum of hours of operation for the calendar year. The monthly hours of operation shall be determined at the end of each calendar month as the sum of daily hours of operation as determined in 4.a.(2) of this section for each operating day of the calendar month. The annual hours of operation shall be determined as the sum of the monthly operating hours for the calendar year.
  - b. Upon the issuance date of this permit, Permittee shall conduct the following monitoring:
    - (1) Conduct and record an observation of visible emissions (excluding water vapor) on PF1.010 through PF1.012 each, on a monthly basis while operating. The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented to their back. If visible emissions are observed, the Permittee shall conduct and record a Method 9 visible emission test. Each Method 9 visible emission test must be conducted by a certified visible emissions reader in accordance with 40 CFR Part 60, Appendix A.

\*\*\*\*\*End of Specific Operating Conditions\*\*\*\*\*



0473 Nevada Department of Conservation and Natural Resources • Division of Environmental Protection

**NDEP**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section VI. Emission Caps**

A. No Emission Caps Defined.

\*\*\*\*\*End of Emission Caps\*\*\*\*\*



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**BUREAU OF AIR POLLUTION CONTROL**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section VII. Surface Area Disturbance Conditions**

Surface area disturbance in excess of 5 acres but less than 20 acres - 15 acres for the Tahoe Western Asphalt, LLC facility.

**A. Fugitive Dust (NAC 445B.22037)**

1. Permittee may not cause or permit the handling, transporting, or storing of any material in a manner which allows or may allow controllable particulate matter to become airborne.
2. Except as otherwise provided in subsection 3, Permittee may not cause or permit the construction, repair, demolition, or use of unpaved or untreated areas without first putting into effect an ongoing program using the best practical methods to prevent particulate matter from becoming airborne. As used in this subsection, "best practical methods" includes, but is not limited to, paving, chemical stabilization, watering, phased construction, and revegetation.
3. The provisions of subsection 2 do not apply to:
  - a. Agricultural activities occurring on agricultural land; or
  - b. Surface disturbances authorized by a permit issued pursuant to NRS 519A.180 which occur on land which is not less than 5 acres or more than 20 acres.

\*\*\*\*\*End of Surface Area Disturbance Conditions\*\*\*\*\*



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**BUREAU OF AIR POLLUTION CONTROL**

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Issued to: TAHOE WESTERN ASPHALT, LLC

**Section VIII. Schedules of Compliance**

A. N/A

\*\*\*\*\*End of Schedule of Compliance Conditions\*\*\*\*\*



**BUREAU OF AIR POLLUTION CONTROL**

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**CLASS II AIR QUALITY OPERATING PERMIT**

Issued to: TAHOE WESTERN ASPHALT, LLC

**Section IX. Amendments**

May 23, 2016: Air Case 8713 - New Class II Stationary Air Quality Operating Permit AP1611-3748 issued.

**This permit:**

1. Is non-transferable. NAC 445B.287.4
2. Shall be posted conspicuously at or near the stationary source. NAC 445B.318.5
3. Carries a term of five years beginning on the date of: May 23, 2016  
NAC 445B.315.3(a).
4. A completed application for renewal of an operating permit must be submitted to the director on the form provided by him with the appropriate fee at least 70 calendar days before the expiration date of this operating permit. NAC 445B.3473.2
5. Any party aggrieved by the Department's decision to issue this permit may appeal to the State Environmental Commission (SEC) within ten days after the date of notice of the Department's action. NRS 445B.340.

**THIS PERMIT EXPIRES ON:** May 23, 2021

Signature Jennifer Collier  
Issued by: Jennifer Collier  
Supervisor, Permitting Branch  
Nevada Bureau of Air Pollution Control

Phone: (775) 687-9551 Date: May 23, 2016

## CLASS II NON-PERMIT EQUIPMENT LIST

Appended to Permit #AP1611-3748

Emission Unit #	Emission Unit Description
IA1.001	Hot Oil Asphalt Tank (20,000 gallon)
IA1.002	Propane Fuel Storage Tank (30,000 gallon)
IA1.003	Diesel Fuel Storage Tank (3,000 gallon)

**EXHIBIT 2**

**EXHIBIT 2**

**Lindsay Liddell**

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**From:** Mark Simons  
**ent:** Tuesday, September 26, 2017 9:21 AM  
**To:** Clay Brust; Lindsay Liddell  
**Subject:** FW: Asphalt Drum Dryer Compliance Testing

Here is the email string with the "testing to occur when you start back up in the spring"

---

**From:** Robert Matthews [<mailto:robert.matthews68@gmail.com>]  
**Sent:** Thursday, September 14, 2017 8:07 PM  
**To:** Mark Simons  
**Subject:** Re: Asphalt Drum Dryer Compliance Testing

Yes sir ! I had all  
The needed data

Sent from my iPhone

On Sep 14, 2017, at 7:48 PM, Mark Simons <[MSimons@rsslblaw.com](mailto:MSimons@rsslblaw.com)> wrote:

This is critical. We need to look at appealing the violations based upon travis's fraud.

Sent from my iPhone

On Sep 14, 2017, at 6:55 PM, Robert Matthews <[robert.matthews68@gmail.com](mailto:robert.matthews68@gmail.com)> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** Robert Matthews <[robert.matthews68@gmail.com](mailto:robert.matthews68@gmail.com)>  
**Date:** October 14, 2016 at 7:20:27 AM PDT  
**To:** "Robert Wimer Sr." <[r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov)>  
**Subject:** Re: Asphalt Drum Dryer Compliance Testing

Working on talking with Bighorn and getting you a schedule date  
as we talk ! Thanks

On Thu, Oct 13, 2016 at 5:14 PM, Robert Wimer Sr.  
<[r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov)> wrote:

Robert,

Per our conversation on site this morning, I understand that you  
intend to operate through mid-November. Section I.L.1 of permit

requires testing within 60 days of achieving maximum rate of production at which the affected facility shall be operated, but not later than 180 days after initial startup. Also, Section I.L.4 requires a written testing procedure for the test of performance must be submitted to the BAPC 30 days before the date of the test of performance to allow BAPC to review the proposed testing procedures. (NAC 445B.252.4)

Testing will be required within 180 days of the actual date of startup. If your facility will not operate more than 180 days prior to shut down this season, testing will be required as soon as production begins again in the spring. Please be aware that if operation commences more than 180 days without testing, a notice of alleged violation will be issued and fines may be assessed.

Per Section II.A.3 please provide notification of the actual date of initial startup.

Sincerely,

Bob

<image001.jpg>

Robert E. Wimer, Sr.

Staff I, Associate Engineer,

Compliance & Enforcement Branch

Bureau of Air Pollution Control  
Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001  
Carson City, NV 89701  
p: 775.687.9541 f: 775.687.6396  
[www.ndep.nv.gov](http://www.ndep.nv.gov) [r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov)

**EXHIBIT 3**

**EXHIBIT 3**



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

June 13, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
P.O. Box 21645  
Carson City, Nevada 89721

**RE: Draft Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit).

TWA was required to conduct initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> and opacity as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005), System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008), System 04 – Lime Silo (S2.002 & PF1.009), and System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.10 – PF1.012). Failure to conduct the required testing constitutes a violation pursuant to Nevada Administrative Code (NAC) 445B.281 **Violations: Classification; administrative fines.**

**NAC 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;"*

The attached *Draft* Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2619 and 2620 allege that TWA has failed to conduct required initial performance tests for System 02, and initial opacity compliance demonstrations (IOCD) for System 01, System 02, System 03,

Tahoe Western Asphalt, LLC

June 13, 2017

Page 2

System 04, and System 05. For more specific information regarding the alleged violations, please refer to the attached NOAVs.

The BAPC requests that TWA attend an enforcement conference at 10:00 am on Tuesday, July 11, 2017 at the BAPC office located at 901 S. Stewart Street, Suite 4001, Carson City, Nevada 89701. The purpose of this conference is to discuss the alleged violations and to confirm whether issuance of the NOAVs is, or is not warranted. The enforcement conference represents TWA's opportunity to present information that might mitigate the BAPC's findings. Please provide confirmation of your attendance at the requested date and time by contacting the BAPC via phone or email within seven (7) days of receiving this notice.

If you have any questions regarding the alleged violations or the enforcement conference, please contact Robert Wimer by phone at (775) 687-9541, or by email at [r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov). If he is unavailable, please contact me by phone at (775) 687-9530, or by email at [travis.osterhout@ndep.nv.gov](mailto:travis.osterhout@ndep.nv.gov).

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: *Draft* Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620

cc (w/enc.): FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0388 78

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

DRAFT NO. 2619

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Robert Matthews, Owner  
Company Name: Tahoe Western Asphalt, LLC  
Address: P.O. Box 21645, Carson City, NV 89721  
Permit Number: AP1611-3748 FIN: A1969  
Site of Alleged Violation: 8013 US 50 East, Carson City, NV 89706  
Date of Observation: 1/5/2017 Arrival: N/A Departure: N/A  
Ambient Temperature: N/A °F Clear: Cloudy Rain: Snow:  
Wind Speed: N/A mph Wind Direction: N/A

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct required initial performance testing.

Evidence:

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit) issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001).

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failure to comply with testing required by the Operating Permit constitutes a major violation. This Draft Notice of Alleged Air Quality Violation and Order (NOAV), in conjunction with Draft NOAV No. 2620 issued under the same cover, represent TWA's fifth and sixth air quality violations within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for a hearing before the Environmental Commission at:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

To appear for an enforcement conference at: 901 S. Stewart Street, Suite 4001, Carson City, NV 89701

Date: July 11, 2017 Time: 10:00 AM

\_\_\_\_\_ This notice is a warning.

Signature

Issued by: Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: June 13, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0388 78

**DRAFT**

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the Environmental Commission of not more than \$10,000 per day of violation.*

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

DRAFT NO. 2620

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: P.O. Box 21645, Carson City, NV 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, NV 89706

Date of Observation: 1/5/2017

Arrival: N/A

Departure: N/A

Ambient Temperature: N/A °F

Clear:

Cloudy

Rain:

Snow:

Wind Speed: N/A mph

Wind Direction: N/A

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct Initial Opacity Compliance Demonstrations (IOCD).

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit) issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct IOCDs as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, the IOCDs should have occurred no later than January 5, 2017 for System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005), System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008), System 04 – Lime Silo (S2.002 & PF1.009), and System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.010 – PF1.012).

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to conduct IOCDs required by the Operating Permit constitutes a major violation. This Draft Notice of Alleged Air Quality Violation and Order (NOAV), in conjunction with Draft NOAV No. 2619 issued under the same cover, represent TWA's fifth and sixth air quality violations within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

To pay the following administrative fine in accordance with 445B.281.1: \$

To take corrective action:

To appear for a hearing before the Environmental Commission at:

Date: Time:

X To appear for an enforcement conference at: 901 S. Stewart Street, Suite 4001, Carson City, NV 89701

Date: July 11, 2017 Time: 10:00 AM

This notice is a warning.

Signature Issued by: Travis Osterhout, P.E. Supervisor, Compliance and Enforcement Branch Bureau of Air Pollution Control

Phone: 775-687-9530 Date: June 13, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0388 78

This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the Environmental Commission of not more than \$10,000 per day of violation.

**EXHIBIT 4**

**EXHIBIT 4**

NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2619 and 2620 allege that TWA has failed to conduct required initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> on System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), and initial opacity compliance demonstrations (IOCD) for System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005), System 02, System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008), System 04 – Lime Silo (S2.002 & PF1.009), and System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.010 – PF1.012).

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV Nos. 2619 and 2620 issued on June 13, 2017. Mr. Matthews did not dispute the failure of TWA to conduct the required testing. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV Nos. 2619 and 2620 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to comply with testing requirements of the Operating Permit constitutes a major violation. NOAV Nos. 2619 and 2620 represent TWA's fifth and sixth air quality violations within the last 60 months.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$2,520.00, for NOAV No. 2619, and \$6,600.00, for NOAV No. 2620, based on use of the Administrative Penalty Matrix for air quality violations.

An appeal of NOAV Nos. 2619 and 2620 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 18

9171 9690 0935 0041 0430 18

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2619

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

**Person(s) to Whom Served:** Mr. Robert Matthews, Owner

**Company Name:** Tahoe Western Asphalt, LLC

**Address:** PO Box 21645, Carson City, Nevada 89721

**Permit Number:** AP1611-3748

**FIN:** A1969

**Site of Alleged Violation:** 8013 US 50 East, Carson City, Nevada 89706

**Date of Observation:** 1/5/2017

**Arrival:** N/A

**Departure:** N/A

**Ambient Temperature:** N/A

**°F Clear:**

**Cloudy:**

**Rain:**

**Snow:**

**Wind Speed:** N/A

**mph**

**Wind Direction:**

**N/A**

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct required initial performance testing.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). Initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> were conducted on April 25, 2017 and retesting was conducted on May 23 and 25, 2017.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether formal issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2619 was or was not warranted. Mr. Matthews did not dispute the failure of TWA to conduct the initial performance testing before the date required by the Operating Permit.

# NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

CO  
ice with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with testing  
ts of the Operating Permit constitutes a major violation. This NOAV, in conjunction with NOAV No. 2620 issued  
ame cover, represents TWA's fifth and sixth air quality violations within the last 60 months.

## ORDER

authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice

To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

To take corrective action: \_\_\_\_\_

To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701

Date: \_\_\_\_\_ Time: \_\_\_\_\_

To conduct a Supplemental Environmental Project specified by the BAPC

This notice is a warning.

Signature \_\_\_\_\_

Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530

Date: July 19, 2017

Mail No.: 9171 9690 0935 0041 0430 18

becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The  
ed in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission,  
Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission  
than \$10,000 per day of violation.

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2620

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

**Person(s) to Whom Served:** Mr. Robert Matthews, Owner  
**Company Name:** Tahoe Western Asphalt, LLC  
**Address:** PO Box 21645, Carson City, Nevada 89721  
**Permit Number:** AP1611-3748 **FIN:** A1969  
**Site of Alleged Violation:** 8013 US 50 East, Carson City, Nevada 89706  
**Date of Observation:** 1/5/2017 **Arrival:** N/A **Departure:** N/A  
**Ambient Temperature:** N/A °F **Clear:** **Cloudy:** **Rain:** **Snow:**  
**Wind Speed:** N/A mph **Wind Direction:** N/A

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct Initial Opacity Compliance Demonstrations (IOCD).

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct IOCDs as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005), System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008), System 04 – Lime Silo (S2.002 & PF1.009), and System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.010 – PF1.012).

# NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Quality Violation and Order (NOAV) No. 2620 was or was not warranted. Mr. Matthews did not dispute the VA to conduct the required IOCDs. During the enforcement conference, the BAPC determined to accept the sions observations conducted as a part of the April 25, 2017 initial performance testing for PM/PM<sub>10</sub>/PM<sub>2.5</sub> as requirements of an IOCD for System 02. At this time, IOCDs have not been received by the BAPC for System 03, System 04 and System 05. Based on the information provided by TWA, the BAPC has determined that ance of NOAV No. 2620 is warranted.

ice with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with testing ts of the Operating Permit constitutes a major violation. This NOAV, in conjunction with NOAV No. 2619 issued ame cover, represents TWA's fifth and sixth air quality violations within the last 60 months.

## ORDER

authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice

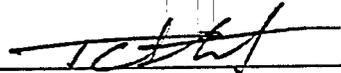
To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

To take corrective action: \_\_\_\_\_

To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

To conduct a Supplemental Environmental Project specified by the BAPC

This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

Mail No.: 9171 9690 0935 0041 0430 18

becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The ed in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission than \$10,000 per day of violation.



**FORM 3: FORM FOR REQUESTING AN APPEAL HEARING**  
 (Provide attachments as needed)

**1. Name, address, telephone number, and signature of appellant:**

Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Representative capacity (if applicable): \_\_\_\_\_

**2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.**

**3. Specify grounds of appeal: (check all that apply)**

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

**4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

For each ground of appeal checked above, provide a brief and concise statement of facts which provide the basis for the appeal.

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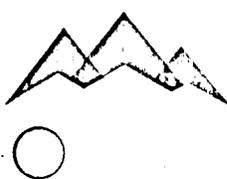
Type of Request: \_\_\_\_\_

Form to: Executive Secretary, State Environmental Commission, 901 South Stewart  
Suite 4001, Carson City, NV 89701

○ ○

**EXHIBIT 5**

**EXHIBIT 5**



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

June 14, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Draft Notice of Alleged Air Quality Violation and Order No. 2621  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit).

On April 25, 2017, BAPC staff was on site of the TWA facility on Highway 50 for observation of a compliance source test being conducted on System 02 - Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). BAPC staff observed System 02 exceeding the 20% opacity limit set forth in the Operating Permit, at which time they conducted an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 22.5%. Failing to meet compliance with permitted emission limits constitutes a violation of Nevada Administrative Code (NAC) 445B.281: Violations.

**NAC 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;"*

The attached *Draft Notice of Alleged Air Quality Violation and Order (NOAV)* alleges that TWA exceeded the opacity limit for System 02 on April 25, 2017. For more specific information regarding the alleged violation, please refer to the attached NOAV.

The BAPC requests that TWA attend an enforcement conference at 10:00 am on Tuesday, July 11, 2017 at the BAPC office located at 901 S. Stewart Street, Suite 4001 Carson City, Nevada 89701. The purpose of this conference is to discuss the alleged violation and to confirm whether issuance of the NOAV is, or is not warranted. The enforcement conference represents your

Tahoe Western Asphalt, LLC

June 14, 2017

Page 2

opportunity to present information that might mitigate the BAPC's findings. Please provide confirmation of your attendance at the requested date and time by contacting the BAPC via phone or email within seven (7) days of receiving this notice.

If you have any questions regarding the alleged violation or the enforcement conference, please contact Robert Wimer by phone at (775) 687-9541, or by email at [r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov). If he is unavailable, please contact me by phone at (775) 687-9530, or by email at [travis.osterhout@ndep.nv.gov](mailto:travis.osterhout@ndep.nv.gov).

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: *Draft* Notice of Alleged Air Quality Violation and Order No. 2621

cc (w/enc.): FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P. E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0388 85

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

DRAFT NO. 2621

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: Tahoe Western Asphalt, LLC, Asphalt Plant, 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 4/25/2017

Arrival: 1:30 pm

Departure: 1:45 pm

Ambient Temperature: 65

°F

Clear:

Cloudy:

Partly Rain:

Snow:

Wind Speed: 5.5 mph

Wind Direction:

Southwest

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 25, 2017, BAPC staff was on site of the TWA facility on Highway 50 for observation of a compliance source test being conducted on System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). BAPC staff observed System 02 was exceeding the 20% opacity limit set forth in the Operating Permit, at which time they conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 22.5%, representing a 12.5% exceedance of the permitted opacity limit.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failing to comply with a permitted emission limit constitutes a major violation. This Draft Notice of Alleged Air Quality Violation and Order (NOAV) represents TWA's seventh air quality violation within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

To pay the following administrative fine in accordance with 445B.281.1: \$

To take corrective action:

X To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: July 11, 2017 Time: 10:00 AM

To conduct a Supplemental Environmental Project specified by the BAPC

This notice is a warning.

Signature Issued by Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: June 14, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0388 85

DRAFT

This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.

**EXHIBIT 6**

**EXHIBIT 6**

NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2621  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2621 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 25, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2621 issued on June 14, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2621 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to comply with a permitted emission limit constitutes a major violation. NOAV No. 2621 represents TWA's seventh air quality violation within the last 60 months.

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$6,450.00, for NOAV No. 2621 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2621 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2621  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 25

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2621

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 4/25/2017 Arrival: 1:30 PM Departure: 1:45 PM

Ambient Temperature: 65 °F Clear: Cloudy: Partly Rain: Snow:

Wind Speed: 5.5 mph Wind Direction: Southwest

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

Evidence:

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/ burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 25, 2017, BAPC staff was on site of the TWA facility on Highway 50 for observation of a compliance source test being conducted on System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). BAPC staff observed that System 02 was exceeding the 20% opacity limit set forth in the Operating Permit, at which time they conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 22.5%, representing a 12.5% exceedance of the permitted opacity limit.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2621 was or was not warranted. Mr. Matthews did not dispute the findings of the BAPC. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2621 is warranted.

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's seventh air quality violation within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at:  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 25

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

**FORM 3: FORM FOR REQUESTING AN APPEAL HEARING**

(Provide attachments as needed)

**1. Name, address, telephone number, and signature of appellant:**

Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Representative capacity (if applicable): \_\_\_\_\_

**2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.**

**3. Specify grounds of appeal: (check all that apply)**

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

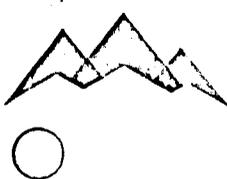
**4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or regulations that give the State Environmental Commission jurisdiction to hear the appeal.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**EXHIBIT 7**

**EXHIBIT 7**



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

June 15, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Draft Notice of Alleged Air Quality Violation and Order No. 2622  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit).

On April 27, 2017, BAPC staff was on site of the TWA facility on Highway 50 conducting an investigation into complaints of odors and observed System 02 - Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) exceeding the 20% opacity limit set forth in the Operating Permit. At this time they conducted an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 32.08%. Failing to meet compliance with permitted emission limits constitutes a violation of Nevada Administrative Code (NAC) 445B.281: **Violations.**

**NAC 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;"*

The attached *Draft* Notice of Alleged Air Quality Violation and Order (NOAV) alleges that TWA exceeded the opacity limit for System 02 on April 27, 2017. For more specific information regarding the alleged violation, please refer to the attached NOAV.

The BAPC requests that TWA attend an enforcement conference at 10:00 am on Tuesday, July 11, 2017 at the BAPC office located at 901 S. Stewart Street, Suite 4001 Carson City, Nevada 89701. The purpose of this conference is to discuss the alleged violation and to confirm whether issuance of the NOAV is, or is not warranted. The enforcement conference represents your

Tahoe Western Asphalt, LLC

June 15, 2017

Page 2

opportunity to present information that might mitigate the BAPC's findings. Please provide confirmation of your attendance at the requested date and time by contacting the BAPC via phone or email within seven (7) days of receiving this notice.

If you have any questions regarding the alleged violation or the enforcement conference, please contact Robert Wimer by phone at (775) 687-9541, or by email at [r.wimer@ndep.nv.gov](mailto:r.wimer@ndep.nv.gov). If he is unavailable, please contact me by phone at (775) 687-9530, or by email at [travis.osterhout@ndep.nv.gov](mailto:travis.osterhout@ndep.nv.gov).

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: *Draft Notice of Alleged Air Quality Violation and Order No. 2622*

cc (w/enc.): FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P. E., Chief, BAPC  
Ashley Taylor, P. E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0388 92

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

DRAFT NO. 2622

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Robert Matthews, Owner  
Company Name: Tahoe Western Asphalt, LLC  
Address: PO Box 21645, Carson City, Nevada 89721  
Permit Number: AP1611-3748 FIN: A1969  
Site of Alleged Violation: Tahoe Western Asphalt, LLC, Asphalt Plant, 8013 US 50 East, Carson City, Nevada 89706  
Date of Observation: 4/27/2017 Arrival: 8:45 am Departure: 9:15 am  
Ambient Temperature: 50 °F Clear: Cloudy Partly Rain: Snow:  
Wind Speed: 5 mph Wind Direction: Southwest

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

Evidence:

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit) issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 27, 2017, BAPC staff was on site of the TWA facility conducting an investigation into complaints of odors coming from the area of the TWA facility and observed System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) exceeding the 20% opacity limit set forth in the Operating Permit. BAPC staff proceeded to conduct an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 32.08% representing a 60% exceedance of the permitted opacity limit.

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This Draft Notice of Alleged Air Quality Violation and Order (NOAV) represents TWA's eighth air quality violation within the last 60 months.

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \$ \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: July 11, 2017 Time: 10:00 AM

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

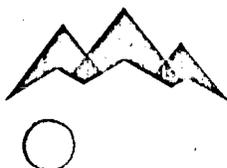
Phone: 775-687-9530 Date: June 15, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0388 92

DRAFT

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 28, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, NV 89721

**RE: Reopening and Revision of Class II Air Quality Operating Permit AP1611-3748,  
FIN A1969, Air Case 9397 - Tahoe Western Asphalt, LLC**

Dear Mr. Matthews:

Pursuant to Nevada Administrative Code (NAC) 445B.325, the purpose of this letter is to provide the required 30-day notice prior to reopening and revising Class II Air Quality Operating Permit AP1611-3748. The purpose of the reopening and revision is to establish more stringent reporting and performance/compliance testing requirements to Class II Air Quality Operating Permit AP1611-3748 as stated below.

1. Reporting requirements in Sections V.B.4.a, V.Ba.4.a, V.C.4.a, V.D.4.a, and V.E.4.a of the Operating Permit will be updated to include monthly records reporting.
2. Performance/Compliance Testing for System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) will be revised to include a daily observation of visible emissions as well as a monthly performance of a Method 9 visible emissions test.
3. Performance/Compliance Testing for System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) will be revised to include 5-year renewal testing for nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and volatile organic compounds (VOC).

If you have any questions, please feel free to contact Ashley Taylor of my staff at (775) 687-9330 or [ashley.taylor@ndep.nv.gov](mailto:ashley.taylor@ndep.nv.gov).

Sincerely,

Lisa Kremer, P.E.  
Chief, Bureau of Air Pollution Control  
Nevada Division of Environmental Protection

LK/at  
E-Copy: Robert Matthews, Tahoe Western Asphalt, LLC  
Ashley Taylor, P.E., GISP, Supervisor, BAPC  
Travis Osterhout, P.E., Supervisor, BAPC  
Certified Mail No. 9171 9690 0935 0040 4797 33

**EXHIBIT 8**

**EXHIBIT 8**

NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2622  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2622 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 27, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2622 issued on June 15, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2622 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines, failure to comply with a permitted emission limit constitutes a major violation.** NOAV No. 2622 represents TWA's eighth air quality violation within the last 60 months.

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$10,875.00, for NOAV No. 2622 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2622 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2622  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 32

9171 9690 0935 0041 0430 32

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2622

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 4/27/2017 Arrival: 8:45 AM Departure: 9:15 AM

Ambient Temperature: 50 °F Clear: Cloudy: Partly Rain: Snow:

Wind Speed: 5 mph Wind Direction: Southwest

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

Evidence:

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/ burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 27, 2017, BAPC staff was on site of the TWA facility conducting an investigation into complaints of odors coming from the area of the TWA facility and observed System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) exceeding the 20% opacity limit set forth in the Operating Permit. BAPC staff proceeded to conduct an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 32.08% representing a 30% exceedance of the permitted opacity limit.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2622 was or was not warranted. Mr. Matthews did not dispute the findings of the BAPC. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2622 is warranted.

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's eighth air quality violation within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 32

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*



State of Nevada  
 Dept. of Conservation & Natural Resources  
**State Environmental Commission** SEC.nv.gov  
 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

**FORM 3: FORM FOR REQUESTING AN APPEAL HEARING**  
 (Provide attachments as needed)

**1. Name, address, telephone number, and signature of appellant:**

Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Representative capacity (if applicable): \_\_\_\_\_

**2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.**

**3. Specify grounds of appeal: (check all that apply)**

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

**4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.**

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**5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.**

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**Date of Request:** \_\_\_\_\_.

**Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701**

**EXHIBIT 9**

**EXHIBIT 9**



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2623  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2623 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 28, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2623 issued on June 19, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2623 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to comply with a permitted emission limit constitutes a major violation. NOAV No. 2623 represents TWA's ninth air quality violation within the last 60 months.

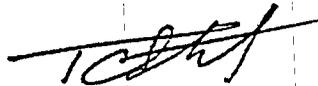
As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$6,600.00, for NOAV No. 2623 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2623 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2623  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0389 60

9171 9690 0935 0041 0389 60

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2623

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 4/28/2017 Arrival: 1:30 PM Departure: 1:45 PM

Ambient Temperature: 65 °F Clear: Cloudy: Partly Rain: Snow:

Wind Speed: 5.5 mph Wind Direction: Southwest

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 28, 2017, BAPC staff was continuing an ongoing investigation into complaints of odors coming from the area of the TWA facility and observed System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) exceeding the 20% opacity limit set forth in the Operating Permit. BAPC staff proceeded to conduct an EPA Method 9 visible emissions test and determined that the average opacity exiting the stack was 28.5%, representing a 43% exceedance of the permitted opacity limit.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2623 was or was not warranted. Mr. Matthews did not dispute the findings of the BAPC. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2623 is warranted.

# NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's ninth air quality violation within the last 60 months.

## ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0389 60

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING  
(Provide attachments as needed)

1. Name, address, telephone number, and signature of appellant:

Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Representative capacity (if applicable): \_\_\_\_\_

2. Attach copy of Nevada Division of Environmental Protection final decision, such as permit or notice of alleged violation, being appealed.

3. Specify grounds of appeal: (check all that apply)

- Final decision in violation of constitutional or statutory provision;
- Final decision made upon unlawful procedure;
- Final decision was affected by other error of law;
- Final decision was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;
- Final decision was arbitrary or capricious or characterized by abuse of discretion;

4. For each ground of appeal checked above, please list the constitutional, Nevada Revised Statute (NRS), and/or Nevada Administrative Code (NAC) provision allegedly violated. Also list the statutes and/or or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

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5. For each ground of appeal checked above, provide a brief and concise statement of the facts which provide the basis for the appeal.

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Date of Request: \_\_\_\_\_

Send Form to: Executive Secretary, State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, NV 89701

**EXHIBIT 10**

**EXHIBIT 10**

**BRIAN SANDOVAL**  
Governor



STATE OF NEVADA  
**STATE ENVIRONMENTAL COMMISSION**

901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249  
Telephone (775) 687-9374  
Fax (775) 687-5856  
[www.sec.nv.gov](http://www.sec.nv.gov)

**Bradley Crowell**  
Director



**CHAIRMAN:**  
Eugene Gans  
Las Vegas, NV

**VICE CHAIRMAN:**  
Tom Porta  
Reno, NV

**MEMBERS**

Vacant  
State Forester  
Division of Forestry

Vacant  
State Board of Health  
Las Vegas, NV

Jason King  
State Engineer  
Division of Water  
Resources

Cathryn Landreth  
Reno, NV

Jim Barbee  
Director, Department of  
Agriculture

Tony Wasley, Director  
Department of Wildlife

Richard Perry  
Administrator  
Division of Minerals

Mark Turner  
Carson City, NV

Cary Richardson  
Carson City, NV

**COUNSEL**  
Dawn Buoncristiani

**STAFF**  
Valerie King  
Executive Secretary

Shanon Pascual  
Recording Secretary

September 22, 2017

Certified Mail # 9171 9690 0935 0037 6433 69

Mr. Robert Matthews, Owner  
Tahoe Western Asphalt, LLC  
P.O. Box 21645  
Carson City, Nevada 89721

Dear Mr. Matthews:

The Nevada State Environmental Commission (SEC) approved the proposed penalty recommendations for the following Notice of Alleged Violations during the meeting held on September 13, 2017.

NOAV 2619 - \$2,520  
NOAV 2620 - \$5,160 (Revised on September 13, 2017)  
NOAV 2621 - \$6,450  
NOAV 2622 - \$10,875  
NOAV 2623 - \$6,600

Total \$31,605.00

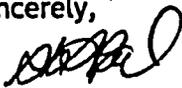
Pursuant to NRS 353.1467, the SEC requires payment of amounts over \$10,000.00 from a private entity to be made electronically. Payments can be made through our e-payment system at <http://sec.nv.gov>.

Pursuant to NRS 445B.640, all administrative fines will be deposited in the school district fund of the county where the violation occurred.

Please note: pursuant to NRS 445B.640, a person who fails to pay the administrative fine within 30 days after the fine is imposed, or October 22, 2017, is guilty of a misdemeanor.

If you have any questions, please feel free to call me at 775-687-9304.

Sincerely,

  
Shanon Pascual  
Recording Secretary

ecc: Greg Iovato, NDEP Administrator  
Lisa Kremer, Bureau of Air Pollution Control  
Travis Osterhout, Bureau of Air Pollution Control  
Valerie King, State Environmental Commission  
Dawn Buoncristiani, SEC Legal Counsel

Attachments: SEC Penalty Letter, NOAVs & Penalty Matrix Calculations

BRIAN SANDOVAL  
Governor



CHAIRMAN  
Eugene Gans  
Las Vegas, NV

VICE CHAIRMAN  
Tom Porta  
Reno, NV

MEMBERS

Kacey KC  
Acting State Forester  
Division of Forestry

Vacant  
State Board of Health  
Las Vegas, NV

Jason King  
State Engineer  
Division of Water  
Resources

Kathryn Landreth  
Reno, NV

Jim Barbee  
Director, Department of  
Agriculture

Tony Wasley, Director  
Department of Wildlife

Rich Perry  
Administrator  
Division of Minerals  
Commission on Mineral  
Resources

Mark Turner  
Carson City, NV

Cary Richardson  
Carson City, NV

COUNSEL  
Dawn Buoncristiani

STAFF  
Valerie King  
Executive Secretary

Shanon Pascual  
Recording Secretary

STATE OF NEVADA  
STATE ENVIRONMENTAL COMMISSION

901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249  
Telephone (775) 687-9374  
Fax (775) 687-5836  
[www.sec.nv.gov](http://www.sec.nv.gov)

August 9, 2017

Bradley Crowell  
Director



Mr. Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

RE: Notice of Alleged Air Quality Violation and Order Nos. 2619, 2620, 2621, 2622 & 2623  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)

Dear Mr. Matthews:

On July 11, 2017, the Nevada Division of Environmental Protection (NDEP) held an enforcement conference with Tahoe Western Asphalt, LLC (TWA) to discuss supporting information regarding the draft Notice of Alleged Violation and Order (NOAV) Nos. 2619, 2620, 2621, 2622 & 2623. As a result of that meeting, NDEP formally issued the above NOAVs. See attachment.

NDEP sent NOAV Nos. 2619, 2620, 2621, 2622 & 2623 via certified mail on July 19, 2017, notifying TWA of its appeal rights pursuant to NRS 445B.340 and NRS 445B.360. TWA did not appeal the NOAVs. Therefore, the State Environmental Commission (SEC) will determine the appropriate penalty for the violations contained in the above referenced NOAVs on Wednesday, September 13, 2017 at 10:00 a.m. at the Nevada Legislative Building, Room 4100, located at 401 south Carson Street.

Pursuant to NRS 445B.640(1), the SEC may approve an administrative penalty of not more than \$10,000 per day per violation. During the September 13 meeting, NDEP will provide the SEC with a brief overview of each NOAV and the recommendation for a total administrative penalty of \$33,045.00. This penalty includes the following individual recommendations:

NOAV 2619 - \$2,520  
NOAV 2620 - \$6,600  
NOAV 2621 - \$6,450  
NOAV 2622 - \$10,875  
NOAV 2623 - \$6,600

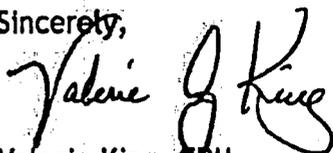
The recommended penalties were calculated using a penalty matrix previously approved by the SEC.

Although your presence is not required at this meeting, you or a representative may wish to attend to speak on behalf of TWA.

The SEC may, without further notice, take administrative action against TWA if the SEC determines that such administrative action is warranted after it considers NOAV Nos. 2619, 2620, 2621, 2622 & 2623.

If you have any questions regarding this notice, please contact me at (775) 687-9374.

Sincerely,



Valerie King, CPM  
Executive Secretary

Certified Mail # 9171 9690 0935 0012 2754 79

ec: Greg Lovato, Administrator  
Jeffrey Kinder, Deputy Administrator  
Lisa Kremer, Chief, BAPC  
Travis Osterhout, Supervisor, BAPC  
Dawn Buoncristiani, SEC/DAG



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Air Quality Violation and Order (NOAV) Nos. 2619 and 2620 allege that TWA has failed to conduct required initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> on System 02 - Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), and initial opacity compliance demonstrations (IOCD) for System 01 - Asphalt Plant: Initial System Loading & Conveyance (PF1.001 - PF1.005), System 02, System 03 - Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 - PF1.008), System 04 - Lime Silo (S2.002 & PF1.009), and System 05 - Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.010 - PF1.012).

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV Nos. 2619 and 2620 issued on June 13, 2017. Mr. Matthews did not dispute the failure of TWA to conduct the required testing. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV Nos. 2619 and 2620 is warranted.

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failure to comply with testing requirements of the Operating Permit constitutes a major violation. NOAV Nos. 2619 and 2620 represent TWA's fifth and sixth air quality violations within the last 60 months.

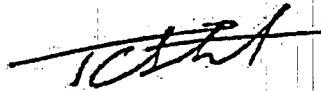
Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$2,520.00, for NOAV No. 2619, and \$6,600.00, for NOAV No. 2620, based on use of the Administrative Penalty Matrix for air quality violations.

An appeal of NOAV Nos. 2619 and 2620 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order Nos. 2619 and 2620  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 18

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STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2619

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 1/5/2017 Arrival: N/A Departure: N/A

Ambient Temperature: N/A °F Clear: Cloudy: Rain: Snow:

Wind Speed: N/A mph Wind Direction: N/A

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct required initial performance testing.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). Initial performance tests for PM/PM<sub>10</sub>/PM<sub>2.5</sub> were conducted on April 25, 2017 and retesting was conducted on May 23 and 25, 2017.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether formal issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2619 was or was not warranted. Mr. Matthews did not dispute the failure of TWA to conduct the initial performance testing before the date required by the Operating Permit.

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with testing requirements of the Operating Permit constitutes a major violation. This NOAV, in conjunction with NOAV No. 2620 issued under the same cover, represents TWA's fifth and sixth air quality violations within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

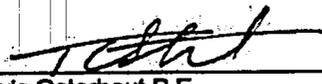
\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature:   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 18

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2620

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 1/5/2017 Arrival: N/A Departure: N/A

Ambient Temperature: N/A °F Clear: Cloudy: Rain: Snow:

Wind Speed: N/A mph Wind Direction: N/A

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct Initial Opacity Compliance Demonstrations (IOCD).

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

TWA was required to conduct IOCDs as set forth in Section IIA of the Operating Permit within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. Given that TWA began operating on July 9, 2016, testing should have occurred no later than January 5, 2017 for System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005), System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001), System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008), System 04 – Lime Silo (S2.002 & PF1.009), and System 05 – Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (PF1.010 – PF1.012).

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2620 was or was not warranted. Mr. Matthews did not dispute the failure of TWA to conduct the required IOCDs. During the enforcement conference, the BAPC determined to accept the visible emissions observations conducted as a part of the April 25, 2017 initial performance testing for PM/PM<sub>10</sub>/PM<sub>2.5</sub> as meeting the requirements of an IOCD for System 02. At this time, IOCDs have not been received by the BAPC for System 01, System 03, System 04 and System 05. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2620 is warranted.

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with testing requirements of the Operating Permit constitutes a major violation. This NOAV, in conjunction with NOAV No. 2619 issued under the same cover, represents TWA's fifth and sixth air quality violations within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

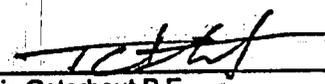
\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 18

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**For:** Tahoe Western Asphalt, LLC, AP1611-3748 (FIN A1969)  
**Violation:** Failed to Conduct Required Initial Performance Testing System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (\$2.001)

**NOAV:** 2619

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table = \$600.00

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

Adjustment to Base Penalty = N/A

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = N/A

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = N/A**

**D. Multiple Emission Unit Violations or Recurring Events:**

\$600.00	X	3.5	=	\$2,100.00
Dollar Amount		Number of Months		Total Gravity Fine

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**II. Economic Benefit**

<b>A.</b>	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>
	Delayed Costs		Avoided Costs		Economic Benefit
<b>Subtotal</b>	<u>\$2,100.00</u>	+	<u>\$0.00</u>	=	<u>\$2,100.00</u>
	Total Gravity Fine		Economic Benefit		Fine Subtotal

**III. Penalty Adjustment Factors**

- A. Mitigating Factors** N/A %
- B. History of Non-compliance**
1. Similar Violations (NOAVs) in previous 5 years:
    - Within previous year (12 months) = 3X (+300%)
    - Within previous three years (36 months) = 2X (+200%)
    - Occurring over three years before = 1.5X (+150%) N/A %
  2. All Recent Violations (NOAVs) in previous 5 years:  
 (+5%) X (Number of recent Violations) = 5% X 4 = 20 %
- Total Penalty Adjustment Factors - Sum of A & B:** 20 %

**IV. Total Penalty**

<u>\$2,100.00</u>	X	<u>20%</u>	=	<u>\$420.00</u>
Penalty Subtotal (from Part II)		Total Adjustment Factors		Total Adjustment
<u>\$2,100.00</u>	+	<u>\$420.00</u>	=	<u>\$2,520.00</u>
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		Total Penalty

Assessed by: Travis Osterhout Date: 7/18/17

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:            < 20% or             $\geq 20\%$  or             $\geq 30\%$              $\geq 40\%$              $\geq 50\%$   
                           NSPS limit            NSPS limit  
                           (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b>	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to $r$
<b>Major &amp; SM sources:</b>		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
<b>"Threshold" pollutant*</b>		
	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
<b>Major pollutant</b>		
	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**For:** Tahoe Western Asphalt, LLC, AP1611-3748 (FIN A1969)  
**Violation:** Failed to Conduct Initial Opacity Compliance Demonstrations (IOCD)  
 System 01 – Asphalt Plant: Initial System Loading & Conveyance (PF1.001 – PF1.005)  
 System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001)  
 System 03 – Asphalt Plant: Drum Dryer Discharge & Conveyance (PF1.006 – PF1.008)  
 System 04 – Lime Silo (S2.002 & PF1.009)

**NOAV:** 2620 (REVISED)

Note: Changes were presented to the State Environmental Commission during the hearing on September 13, 2017.

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table

$$\begin{aligned} & \$200.00 \times 1 \text{ System (System 02)} = \$200.00 \\ & \$200.00 \times 3 \text{ Systems (Systems 01, 03, \& 04)} = \$600.00 \end{aligned}$$

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

$$\text{Adjustment to Base Penalty} = \underline{\text{N/A}}$$

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

$$\text{Adjustment to Base Penalty} = \underline{\text{N/A}}$$

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

$$\text{C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B)} = \underline{\text{N/A}}$$

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**D. Multiple Emission Unit Violations or Recurring Events:**

\$200.00	X	3.5	=	\$700.00
Dollar Amount		Number of Months		Gravity Fine
\$600.00	X	6	=	\$3,600.00
Dollar Amount		Number of Months		Gravity Fine
			=	\$4,300.00
				Total Gravity Fine

**II. Economic Benefit**

A.	\$0.00	+	\$0.00	=	\$0.00
	Delayed Costs		Avoided Costs		Economic Benefit
Subtotal	\$4,300.00	+	\$0.00	=	\$4,300.00
	Total Gravity Fine		Economic Benefit		Fine Subtotal

**III. Penalty Adjustment Factors**

A. Mitigating Factors	N/A %
B. History of Non-compliance	
1. Similar Violations (NOAVs) in previous 5 years:	
Within previous year (12 months) = 3X (+300%)	
Within previous three years (36 months) = 2X (+200%)	
Occurring over three years before = 1.5X (+150%)	N/A %
2. All Recent Violations (NOAVs) in previous 5 years:	
(+5%) X (Number of recent Violations) = 5% X 4 =	20 %
 Total Penalty Adjustment Factors - Sum of A & B:	 20 %

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**IV. Total Penalty**

\$4,300.00	X	20%	=	\$860.00
Penalty Subtotal (from Part II)		Total Adjustment Factors		Total Adjustment
\$4,300.00	+	\$860.00	=	\$5,160.00
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		Total Penalty

**Assessed by:** Travis Osterhout **Date:** 9/13/17

Nevada Division of Environmental Protection  
 Bureau of Air Pollution Control  
 Administrative Fine Calculation Worksheet for Emissions Violations

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:            < 20% or            ≥ 20% or            ≥ 30%            ≥ 40%            ≥ 50%  
                          NSPS limit            NSPS limit  
                          (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit, *r*

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> (all pollutants are minor)	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to <i>r</i>
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to <i>r</i>
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to <i>r</i>
Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to <i>r</i>

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2621  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2621 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 25, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2621 issued on June 14, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2621 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines, failure to comply with a permitted emission limit constitutes a major violation.** NOAV No. 2621 represents TWA's seventh air quality violation within the last 60 months.

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$6,450.00, for NOAV No. 2621 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2621 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2621  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 25

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2621

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

**Person(s) to Whom Served:** Mr. Robert Matthews, Owner

**Company Name:** Tahoe Western Asphalt, LLC

**Address:** PO Box 21645, Carson City, Nevada 89721

**Permit Number:** AP1611-3748

**FIN:** A1989

**Site of Alleged Violation:** 8013 US 50 East, Carson City, Nevada 89706

**Date of Observation:** 4/25/2017      **Arrival:** 1:30 PM      **Departure:** 1:45 PM

**Ambient Temperature:** 65      °F      **Clear:**      **Cloudy:** Partly Rain:      **Snow:**

**Wind Speed:** 5.5      mph      **Wind Direction:** Southwest

**It is alleged that the following regulation was violated by the person named in this notice:**

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

**It is alleged that the following act or practice constitutes the violation:**

Failure to comply with a permitted emission limit.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/ burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 25, 2017, BAPC staff was on site of the TWA facility on Highway 50 for observation of a compliance source test being conducted on System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001). BAPC staff observed that System 02 was exceeding the 20% opacity limit set forth in the Operating Permit, at which time they conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 22.5%, representing a 12.5% exceedance of the permitted opacity limit.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2621 was or was not warranted. Mr. Matthews did not dispute the findings of the BAPC. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2621 is warranted.

**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's seventh air quality violation within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

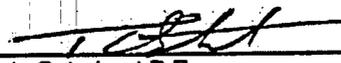
\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at:  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature:   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 25

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**For:** Tahoe Western Asphalt, LLC, AP1611-3748 (FIN A1969)  
**Violation:** Failed Opacity (Method 9 Visible Emissions Observation)  
System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001)

**NOAV:** 2621

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table =\$1,000.00

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

Adjustment to Base Penalty = N/A

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = 1.5

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = \$1,000 x 1.5 = \$1,500.00**

**D. Multiple Emission Unit Violations or Recurring Events:**

<u>\$1,500.00</u>	<b>X</b>	<u>1</u>	<b>=</b>	<u>\$1,500.00</u>
Dollar Amount		Number of Events		Total Gravity Fine

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**II. Economic Benefit**

<b>A.</b>	<u>\$0.00</u> Delayed Costs	+	<u>\$0.00</u> Avoided Costs	=	<u>\$0.00</u> Economic Benefit
<b>Subtotal</b>	<u>\$1,500.00</u> Total Gravity Fine		<u>\$0.00</u> Economic Benefit		<u>\$1,500.00</u> Fine Subtotal

**III. Penalty Adjustment Factors**

**A. Mitigating Factors**

N/A %

**B. History of Non-compliance**

1. Similar Violations (NOAVs) in previous 5 years:
  - Within previous year (12 months) = 3X (+300%)
  - Within previous three years (36 months) = 2X (+200%)
  - Occurring over three years before = 1.5X (+150%) 300 %
  
2. All Recent Violations (NOAVs) in previous 5 years:  
 (+5%) X (Number of recent Violations) = 5% X 6 = 30 %
  
- Total Penalty Adjustment Factors - Sum of A & B:** 330 %

**IV. Total Penalty**

<u>\$1,500.00</u> Penalty Subtotal (from Part II)	X	<u>330%</u> Total Adjustment Factors	=	<u>\$4,950.00</u> Total Adjustment
<u>\$1,500.00</u> Penalty Subtotal (from Part II)	+	<u>\$4,950.00</u> Penalty Increase or Decrease	=	<u>\$6,450.00</u> Total Penalty

Assessed by: Travis Osterhout Date: 7/18/17

Nevada Division of Environmental Protection  
 Bureau of Air Pollution Control  
 Administrative Fine Calculation Worksheet for Emissions Violations

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:	< 20% or NSPS limit (where NSPS opacity limit is < 20%)	≥ 20% or NSPS limit	≥ 30%	≥ 40%	≥ 50%
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**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> (all pollutants are minor)	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
“Threshold” pollutant*	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
Major pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2622  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2622 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 27, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2622 issued on June 15, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2622 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines, failure to comply with a permitted emission limit constitutes a major violation.** NOAV No. 2622 represents TWA's eighth air quality violation within the last 60 months.

As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$10,875.00, for NOAV No. 2622 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2622 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2622  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0430 32

9171 9690 0935 0041 0430 32

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR POLLUTION CONTROL  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249

NO. 2622

NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Robert Matthews, Owner

Company Name: Tahoe Western Asphalt, LLC

Address: PO Box 21645, Carson City, Nevada 89721

Permit Number: AP1611-3748

FIN: A1969

Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89706

Date of Observation: 4/27/2017 Arrival: 8:45 AM Departure: 9:15 AM

Ambient Temperature: 50 °F Clear: Cloudy: Partly Rain: Snow:

Wind Speed: 5 mph Wind Direction: Southwest

It is alleged that the following regulation was violated by the person named in this notice:

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with a permitted emission limit.

**Evidence:**

Tahoe Western Asphalt, LLC (TWA) operates a propane-fired drum dryer mixer/ burner for the purpose of producing asphalt in Carson City, Nevada under Class II Air Quality Operating Permit AP1611-3748 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 23, 2016.

On April 27, 2017, BAPC staff was on site of the TWA facility conducting an investigation into complaints of odors coming from the area of the TWA facility and observed System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) exceeding the 20% opacity limit set forth in the Operating Permit. BAPC staff proceeded to conduct an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 32.08% representing a 60% exceedance of the permitted opacity limit.

On July 11, 2017, the BAPC held an enforcement conference with TWA to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2622 was or was not warranted. Mr. Matthews did not dispute the findings of the BAPC. Based on the information provided by TWA, the BAPC has determined that formal issuance of NOAV No. 2622 is warranted.

### NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's eighth air quality violation within the last 60 months.

### ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

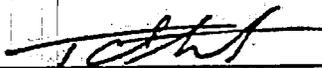
\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0430 32

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**For:** Tahoe Western Asphalt, LLC, AP1611-3748 (FIN A1969)  
**Violation:** Failed Opacity (Method 9 Visible Emissions Observation)  
System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001)

**NOAV:** 2622

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table = \$1,000.00

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

Adjustment to Base Penalty = N/A

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = 2.5

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

**C. Adjusted Base Penalty:** Base Penalty (A) x Deviation Factors (B) = \$1,000 x 2.5 = \$2,500.00

**D. Multiple Emission Unit Violations or Recurring Events:**

\$2,500.00	X	1	=	\$2,500.00
Dollar Amount		Number of Event		Total Gravity Fine

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**II. Economic Benefit**

<b>A.</b>	<u>\$0.00</u> Delayed Costs	+	<u>\$0.00</u> Avoided Costs	=	<u>\$0.00</u> Economic Benefit
<b>Subtotal</b>	<u>\$2,500.00</u> Total Gravity Fine	+	<u>\$0.00</u> Economic Benefit	=	<u>\$2,500.00</u> Fine Subtotal

**III. Penalty Adjustment Factors**

**A. Mitigating Factors** N/A %

**B. History of Non-compliance**

1. Similar Violations (NOAVs) in previous 5 years:
  - Within previous year (12 months) = 3X (+300%)
  - Within previous three years (36 months) = 2X (+200%)
  - Occurring over three years before = 1.5X (+150%) 300 %
  
2. All Recent Violations (NOAVs) in previous 5 years:  
 (+5%) X (Number of recent Violations) = 5% X 7 = 35 %
  
- Total Penalty Adjustment Factors - Sum of A & B: 335 %

**IV. Total Penalty**

<u>\$2,500.00</u>	X	<u>335%</u>	=	<u>\$8,375.00</u>
Penalty Subtotal (from Part II)		Total Adjustment Factors		Total Adjustment
<u>\$2,500.00</u>	+	<u>\$8,375.00</u>	=	<u>\$10,875.00</u>
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		Total Penalty

Assessed by: Travis Osterhout Date: 7/18/17

**Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations**

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:            < 20% or             $\geq 20\%$  or             $\geq 30\%$              $\geq 40\%$              $\geq 50\%$   
                           NSPS limit            NSPS limit  
                           (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b>	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to $r$
<b>Major &amp; SM sources:</b>		
Minor pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
"Threshold" pollutant*	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$
Major pollutant	$r < 1.2$	(none) <sup>1</sup>
	$r \geq 1.2$	proportional to $r$

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

**STATE OF NEVADA**  
Department of Conservation & Natural Resources  
Brian Sandoval, Governor  
Bradley Crowell, Director  
Greg Lovato, Administrator

July 19, 2017

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
PO Box 21645  
Carson City, Nevada 89721

**RE: Notice of Alleged Air Quality Violation and Order No. 2623  
Class II Air Quality Operating Permit AP1611-3748 (FIN A1969)**

Dear Mr. Matthews:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Tahoe Western Asphalt, LLC (TWA) has violated conditions of Class II Air Quality Operating Permit AP1611-3748 (Operating Permit). Specifically, the attached Notice of Alleged Violation and Order (NOAV) No. 2623 alleges that TWA exceeded the opacity limit for System 02 - Asphalt Plant: Drum Dryer System (S2.001) on April 28, 2017.

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice states in part:**

*"1. Failure to comply with any requirement of NAC 445B.001 to 445B.390, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;*

On July 11, 2017, the BAPC held an enforcement conference with TWA to discuss supporting information regarding the *Draft* NOAV No. 2623 issued on June 19, 2017. Mr. Matthews did not dispute the findings of the BAPC. Based on the information presented during the enforcement conference, the BAPC has determined that formal issuance of NOAV No. 2623 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to comply with a permitted emission limit constitutes a major violation. NOAV No. 2623 represents TWA's ninth air quality violation within the last 60 months.

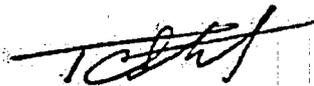
As was discussed during the enforcement conference, the BAPC makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The BAPC will be recommending a penalty of \$6,600.00, for NOAV No. 2623 based on use of the Administrative Penalty Matrix for air quality violations.

Tahoe Western Asphalt, LLC  
July 19, 2017  
Page 2

An appeal of NOAV No. 2623 may be requested pursuant to Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to NRS 445B.340 Appeals to Commission: Notice of appeal. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding the alleged violation, please contact Robert E. Wimer Sr. at (775) 687-9541. If he is unavailable, please contact me at (775) 687-9530.

Sincerely,



Travis Osterhout, P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

TO/rws

enc.: 1. Notice of Alleged Air Quality Violation and Order No. 2623  
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Carson City Board of County Commissioners  
FIN A1969 (Certified Copy)

E-Copy: Lisa Kremer, P.E., Chief, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
Robert Wimer, Sr., Staff Engineer, BAPC  
Chad Myers, Staff Engineer, BAPC  
Charles Morrow, TWA

Certified Mail No.: 9171 9690 0935 0041 0389 60

9171 9690 0935 0041 0389 60



**NOTICE OF ALLEGED AIR QUALITY VIOLATION AND ORDER**

**Evidence (cont.):**

In accordance with NAC 445B.281 Violations: Classification; administrative fines, failing to comply with a permitted emission limit constitutes a major violation. This NOAV represents TWA's ninth air quality violation within the last 60 months.

**ORDER**

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

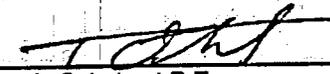
\_\_\_\_\_ To pay the following administrative fine in accordance with 445B.281.1: \_\_\_\_\_

\_\_\_\_\_ To take corrective action: \_\_\_\_\_

\_\_\_\_\_ To appear for an enforcement conference at: 901 S. Stewart St. Suite 4001, Carson City, Nevada, 89701  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ To conduct a Supplemental Environmental Project specified by the BAPC

\_\_\_\_\_ This notice is a warning.

Signature   
Issued by: Travis Osterhout P.E.  
Supervisor, Compliance and Enforcement Branch  
Bureau of Air Pollution Control

Phone: 775-687-9530 Date: July 19, 2017

TO/rws

Certified Mail No.: 9171 9690 0935 0041 0389 60

*This order becomes final unless appealed within ten (10) days after receipt of this notice or ten (10) days after a required enforcement conference. The person named in this order may appeal this notice by submitting a written request for a hearing to the Chairman of the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. An administrative fine may be levied by the State Environmental Commission of not more than \$10,000 per day of violation.*

Nevada Division of Environmental Protection  
Bureau of Air Pollution Control  
Administrative Fine Calculation Worksheet for Emissions Violations

**For:** Tahoe Western Asphalt, LLC, AP1611-3748 (FIN A1969)  
**Violation:** Failed Opacity (Method 9 Visible Emissions Observation)  
System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001)

**NOAV:** 2623

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table = \$1,000.00

**B. Extent of Deviation – Deviation Factors:**

**1. Volume of Release:**

**A. For CEMS or source testing, see *Guidelines* on page 3.**

Adjustment to Base Penalty = N/A

**B. For opacity, see *Guidelines* on page 3 and refer to table below.**

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = 1.5

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:**

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) = \$1,000 x 1.5 = \$1,500.00**

**D. Multiple Emission Unit Violations or Recurring Events:**

\$1,500.00	X	1	=	\$1,500.00
Dollar Amount		Number of Event		Total Gravity Fine



Nevada Division of Environmental Protection  
 Bureau of Air Pollution Control  
 Administrative Fine Calculation Worksheet for Emissions Violations

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:            < 20% or             $\geq 20\%$  or             $\geq 30\%$              $\geq 40\%$              $\geq 50\%$   
                          NSPS limit            NSPS limit  
                          (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> ( <i>all pollutants are minor</i> )	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
"Threshold" pollutant*	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
Major pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$

Hazardous Air Pollutant (HAP) – see Part I.B.2 Toxicity of Release (2X multiplier)

**EXHIBIT 11**

**EXHIBIT 11**

**DECLARATION OF ROBERT MATTHEWS IN SUPPORT OF APPEAL**

1  
2 I, ROBERT MATTHEWS, am over the age of eighteen (18) and am competent to  
3 testify to the matters set forth herein.  
4

5 1. I am the Owner of Tahoe Western Asphalt, LLC ("TWA").

6 2. I submit this Declaration in support of the Appeal of SEC Penalties.

7 3. TWA began its initial operation on July 9, 2016.

8 4. TWA is zoned for industrial use, but is located next to a residential  
9 subdivision.

10 5. TWA's operating schedule follows an unusual seasonal schedule specific  
11 to the asphalt production industry.

12 6. Every year, I leave Nevada for the winter months because the weather  
13 becomes too cool to lay asphalt.

14 7. TWA completely shuts down operations in the winter because asphalt  
15 production is necessarily tied to the ability to lay asphalt in the warm weather.

16 8. TWA was completely shut down between fall 2016 and spring 2017.

17 9. I left Northern Nevada for winter 2016-2017.

18 10. I spoke with an NDEP representative about how the shutdown would  
19 affect TWA's initial testing requirements.

20 11. NDEP granted an extension to the initial testing requirements because  
21 TWA does not operate on a traditional year-round schedule like most businesses.

22 12. TWA restarted operations in spring 2017 when the weather warmed up  
23 enough to lay asphalt and I returned to Northern Nevada.

24 13. TWA was not operating in January 2017; TWA was shut down because  
25 the asphalt industry does not operate in the winter.

26 14. TWA scheduled initial testing when it was set to restart operations spring  
27 of 2017.

28 15. The testing company was sold and a noncompete clause prohibited the

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company from performing the test work at the scheduled time.

16. TWA scheduled the next available company to conduct initial air quality tests.

17. TWA completed the initial air quality tests on April 25, 2017.

18. In late spring of 2017, the residents nearby began complaining in an effort to shut down TWA operations.

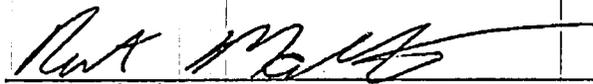
19. The residents were heard at the penalty hearing making claims that Mr. Osterhout told them he was going to shut down TWA.

20. TWA has no record of and disputes the existence of a notification from NDEP that NDEP conducted its own air quality tests and that TWA failed those tests.

21. If TWA received notice that it failed one emissions test, it would not have continued operations emitting air beyond the opacity limits.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED this 2 day of October, 2017.

  
Robert Matthews