



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

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

**SEC Hearing to Determine Motion to Dismiss
Notice Pursuant to NAC 445B.891
Notice Amended to Revise Date of Hearing**

Date: November 13, 2017

To: Appellant:
Tahoe Western Asphalt, LLC
Represented by Mark Simons, Esq.
Certified Mail: 9171 9690 0935 0012 2754 86

Intervener:
Nevada Division of Environmental Protection
Represented by Belinda Suwe, Esq.
Hand Delivered

From: Valerie King, CPM, Executive Secretary

Subject: Notice of Hearing to Consider Motion to Dismiss

On October 2, 2017, a request for an appeal hearing was submitted by Tahoe Western Asphalt, LLC (TWA). On October 11, 2017, the Nevada Division of Environmental Protection (NDEP) submitted an amended Petition for Leave to Intervene and a Motion to Dismiss the request for an appeal hearing filed by TWA. On October 23, 2017, the State Environmental Commission (SEC) granted NDEP's Petition for Leave to Intervene. The SEC has therefore scheduled a hearing regarding the NDEP Motion to Dismiss Appeal. **The hearing will be held on December 19, 2017, beginning at 9:00 a.m. in Carson City, Nevada at the Legislative Building, Room 1214, located at 401 South Carson Street.**

The SEC must determine if it has jurisdiction to hear this appeal pursuant to NRS 445B.340.

The regulation violated, as cited in the Request for an Appeal, Form 3, is NAC 445B.890(2)(d), (e) and (f).

About the Requested Appeal and Motion to Dismiss: On October 2, 2017, TWA filed an appeal signed by Lindsay Liddell, a representative attorney.

In summary, TWA reports the grounds for the appeal regarding the penalties assessed by the SEC on September 13, 2017 are:

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

On October 23, 2017, NDEP's petition for Leave to Intervene was granted by the SEC. The Motion to Dismiss the Appeal was set for hearing, which subsequently changed from December 5, 2017 to December 19, 2017. The substantive issue regarding the Motion to Dismiss the Appeal is that an appeal must be based on a final decision of the Department; whereas, the September 13, 2017 penalty assessments are final decisions of the SEC.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: <http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>

Related Information: Additional information about this appeal is, or will be, available on the SEC website at the following location: http://sec.nv.gov/main/hearing_12_19_17.htm

ecc:
SEC Members
SEC/DAG
NDEP Staff