



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission [SEC.nv.gov](http://SEC.nv.gov)

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

Summary Minutes of the  
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of May 3, 2017 10:00 AM

Bryan Building, Tahoe Room, 2<sup>nd</sup> Floor  
901 South Stewart Street  
Carson City, NV

**Members Present:**

E. Jim Gans, Chairman  
Tom Porta, Vice Chairman  
Mark Turner  
Cary Richardson  
Kathryn Landreth  
Jason King  
Rich Perry  
Tony Wasley

**Members Absent:**

Jim Barbee  
Kacey KC

**SEC Staff Present:**

Dawn Buoncristiani, SEC/DAG  
Valerie King, Executive Secretary  
Shanon Pascual, Recording Secretary

**Members of the Public Present:**

Robert Mathews, Tahoe Western Asphalt  
Morgan Friend, DMV  
Ivie Hatt, DMV  
Gay McCleary, ECON Inc.

**BEGIN SUMMARY MINUTES**

**1) Call to order, Roll Call, Establish Quorum: (Discussion)** The meeting was called to order at 10:03 am by Chairman Jim Gans. Ms. King confirmed the hearing was properly noticed and that a quorum was present.

**2) Public Comments: (Discussion)** Chairman Gans called for public comment. There was none.

**3) Approval of the minutes for the November 16, 2016 SEC meetings: (Action Item)** Chairman Gans requested comments from the Commission regarding the November meeting minutes. Chairman Gans addressed two typo corrections then asked for a motion to approve the minutes.

Commissioner Landreth moved to approve the minutes and Commissioner King seconded. The minutes were unanimously approved.

## Air Penalty

4) **Rawhide Mining, LLC, Notice of Alleged Violation No. 2577: (For Possible Action)** Ms. Kremer, Chief of Air Pollution Control, presented the proposed penalty to the Commission ([Attachment 1](#)). On December 8, 2015 to December 10, 2015, Rawhide conducted required annual mercury testing. A final report of the testing result was received by the Bureau of Air Pollution Control (BAPC) on February 9, 2016. Upon review of the final report it was discovered that the results exceeded the permitted emissions limits. On August 25, 2016 BAPC held an enforcement conference regarding the Notice of Alleged Air Quality Violation. Rawhide was unable to present information that indicated the violation had not occurred as alleged.

Mr. Osterhout described how the penalty amount was determined using the standard penalty matrix. The total recommended penalty for the NOAV was \$6,480.00.

Chairman Gans asked for questions from the Commission which Ms. Kremer and Mr. Osterhout responded to.

Chairman Gans invited comments from anyone who wanted to speak on behalf of Rawhide Mining. No one came forward.

**Motion:** Commissioner Landreth moved to approve the recommended penalty of \$6,480.00 for Air Quality Violation No. 2577. Commissioner King seconded the motion. It passed unanimously.

## Air Penalty

5) **L. Mackedon and Sons, Inc, Notice of Alleged Violation No. 2587: (For Possible Action)** Ms. Kremer presented the proposed penalty to the Commission ([Attachment 2](#)). On October 28, 2015 BAPC staff received a phone call from the legal counsel of L. Mackedon & Sons, Inc. stating that Mr. Mackedon's facility had been without a valid operating permit since 2010 as the result of an oversight. L. Mackedon & Sons Inc. coordinated with the BAPC to submit a new application. On December 12, 2016 the BAPC held an enforcement conference with L. Mackedon and Sons to review the findings. NDEP determined the violation was an administration violation associated with the failure to apply for and obtain an air quality operating permit.

Mr. Osterhout described how the penalty amount was determined using the standard penalty matrix. The total recommended penalty for the NOAV was \$4,000.00.

Chairman Gans asked for questions from the Commission and Ms. Kremer, and Mr. Osterhout responded to the questions.

Chairman Gans asked if anyone from L. Mackedon and Sons would like to address the Commission. No one came forward. Ms. King stated she had previously spoken with Gib Mackedon and was told they would not be contesting the recommended penalty and were grateful for the way they were treated by NDEP throughout the issue. A letter was provided by Mr. Mackedon describing his experience that Ms. King read into the record ([Attachment 3](#)).

**Motion:** Commissioner Perry moved to approve the recommended penalty of \$4,000.00 for Air Quality Violation No. 2587. Commissioner Porta seconded the motion. It passed unanimously.

## Air Penalty

**6) Tahoe Western Asphalt, LLC, Notice of Alleged Violations No. 2601: (For Possible Action)** Ms. Kremer presented the proposed penalty to the Commission ([Attachment 4](#)). NDEP recommended a penalty of \$1,500.00 for Tahoe Western Asphalt, LLC for failure to comply with visible emissions observation for opacity. On October 20, 2016 BAPC observed the Asphalt Plant exceeding the 20% opacity limit set forth in the operating permit. BAPC staff stopped at the facility to conduct a visible emissions observation test and determined that the stack was exceeding the permit limit. On December 6, 2016, an enforcement conference was held. Tahoe Western Asphalt was unable to present information that indicated the violation had not occurred.

Mr. Osterhout described how the penalty amount was determined using the standard penalty matrix. The total recommended penalty was \$1,500.00.

Chairman Gans asked for questions or comments from the Commission. Mr. Kinder, Deputy Administrator, and Mr. Osterhout responded to the questions.

Chairman Gans asked if anyone was present from the company who wished to address the Commission. Mr. Robert Matthews came forward to represent Tahoe Western Asphalt. Mr. Matthews wanted to present a handout to the Commission. The handout was not accepted by the Commission because it was not directly related to the penalty specified on the agenda and being considered by the Commission. Mr. Matthews also informed the Commission that he knows Commissioner Turner and has done business with him in the past.

Mr. Matthews continued with a timeline of compliance issues that he had addressed and commented that he notified the staff of all the repairs that he had completed along with bag changes. Chairman Gans asked Mr. Matthews if he believed a violation had occurred with respect to his emissions. Mr. Matthews replied in the affirmative, stating that he was not contesting the violation and was working with his staff to resolve the issues.

Commissioner Porta asked if the bags in the baghouse needing replacement had been replaced and if he operated his system without the necessary repairs after October 20, 2016, when the violation was brought to his attention.

Mr. Matthews stated that he operated the system on two days after October 20, 2016. He operated on November 8, 2016 and December 28, 2016 prior to shutting the system down. Mr. Matthews stated that he has since engaged testers and completed other repairs.

Commissioner Porta asked if Mr. Matthews had operated the system prior to making the repairs. Mr. Matthews confirmed that he had because the bags were a special order.

Chairman Gans asked for any other questions or comments. Commissioner Turner recused himself from the vote due to the fact he had previously conducted business with Mr. Matthews.

**Motion:** Commissioner King moved to approve the recommended penalty of \$1,500.00 for Air Quality Violations No. 2601. Commissioner Wasley seconded the motion. It passed unanimously.

**7) Temporary Regulatory Petition - T2017-01 Bureau of Air Quality Planning and Air Pollution Control: (For Possible Action)** Mr. Dragoni, Bureau Chief for Air Quality Planning, presented the temporary regulatory petition to the Commission. Mr. Dragoni explained the proposed change of

posting Public Notices. The proposed change would remove the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper and replace it with electronic notice (e-notice) with the additional requirement of electronic access (e-access) of the draft permit. (Attachment 5)

Mr. Dragoni stated that the proposed temporary regulation would result in a significant communication improvement with the public regarding permits and other actions. E-notice would also provide flexibility for the NDEP by avoiding time delays associated with the newspaper publication and allowing for a faster correction of errors and rescheduling of events. Additionally, resources currently being spent by the NDEP will be more efficiently used by removing the newspaper notice requirement and by removing the requirement to provide notice of the Director's proposed actions along with a copy of the Class II operating permit to public libraries. He stated that the proposed action would not impact the time limits associated with the public notice process, only the mandatory media that public notices must be posted in.

Mr. Dragoni stated that the proposed temporary regulation also addresses the posting of Class II operating permits in a public library in the area where the Class II source will be located. Some problems with delivering hard copies to libraries include variable or limited open hours, a limited understanding of the content of the notice and staff having to physically drive to libraries to deliver, and subsequently explain what the notice is and how the process works.

Ms. Kremer informed the Commission that there are 91 libraries in the state with computers for use. If a person does not have access to a computer in the home or a smart phone to access the internet, there is public transportation to the libraries that have computers and internet access. Ms. Kremer stated that the BAPC also sends people on a mailing list notices through the USPS. This proposed regulation would not preclude traditional posting.

Commissioner Richardson indicated he would like to maintain newspaper notices in the local publications.

Chairman Gans asked for questions from the Commission. Mr. Kinder, Ms. Kremer, and Mr. Dragoni then answered questions from the Commission.

Commissioner Porta suggested NDEP post a notice that would inform the public about the transition from a paper format to an electronic format.

**Motion:** Commissioner King moved to adopt Temporary Regulation T2017-01. Commissioner Turner seconded the motion. All voted in favor of adoption of the temporary regulation with exception to Commissioner Richardson.

**8) Temporary Regulatory Petition - T2017-02 Bureau of Air Quality Planning and Air Pollution Control: (For Possible Action)** Mr. Kinder presented the temporary regulatory petition to the Commission. (Attachment 6) He stated that the Governor designated NDEP to work in coordination with the Governor's Office of Energy to develop an overall Mitigation Plan for use of the funds with input from the Nevada Committee on the Control of Emission of Motor Vehicles, also known as the I/M Committee. Pursuant to NAC 445B, the I/M Committee contains representatives from the Department of Motor Vehicles, NDEP, Clark and Washoe County Air Quality, Nevada Department of Transportation, Agriculture and a non-voting member from EPA. The settlement requires the NDEP to seek and consider public input on the Mitigation Plan which will set forth the criteria for eligible projects and the overall process under which Nevada projects will be funded.

Mr. Kinder stated that the settlement requires the funds be used to reduce NOx emissions. The NDEP interprets that we will evaluate eligible projects and weight them with factors such as feasibility; primarily cost benefit with respect to NOx emission reductions. NDEP expects to

prioritize projects which reduce NOx emissions at a higher level over those which reduce NOx emissions at a lower level. The NDEP is planning to use an allocation of up to 15% to support ZEV infrastructure, as allowed by the settlement, while coordinating with the Governor's office of Energy and Nevada Department of Transportation.

Chairman Gans asked for questions from the Commission. Mr. Kinder and Mr. Dragoni then responded to questions from the Commissioners.

**Motion:** Commissioner Porta moved to adopt Temporary Regulation T2017-02. Commissioner Landreth seconded the motion. It passed unanimously.

**9) Administrator's Briefing to the Commission: (Discussion)** Mr. Greg Lovato, Administrator of NDEP, updated the Commission on recent management changes. Ms. Kremer is now the Bureau Chief of Air Pollution Control. Former Administrator Mr. Emme left NDEP February 3, 2017 and now works for the State of Oregon. Mr. Lovato acknowledged Mr. Emme for his long time service to NDEP. He stated that Mr. Emme really understood the machinery of NDEP and led efforts to improve our productivity and accountability. NDEP will continue to build on that. Mr. Lovato stated that he was appointed as Administrator in February and felt confident as a result of the strength of the current Bureau Chiefs. In his new role he will be sitting on the Nevada Board to Review Claims and serve as Nevada's representative on the Rocky Mountain Low Level Radioactive Waste Board.

Mr. Lovato stated that the NDEP budget has been approved by the finance committee and is pending final approval. Some of the budget enhancements and changes include the following:

The redesign of the SEC website that has a consistent look as the new NDEP webpage, which will be launched in June and has a searchable page dedicated to public notices.

Conversion of an existing position to a Publications Editor which will help enhance the look of the website and make the different pages more consistent and easier for the lay person to navigate.

The Air Program is seeking a new compliance assistance contract with the UNR Small Business Environmental Program.

The Water Pollution Control Bureau is adding three new positions to its Stormwater program, two in Carson City and one in Las Vegas. In addition, the Source Water Protection Program will be transferred from the Bureau of Water Pollution Control to the Bureau of Safe Drinking Water.

In the Bureau of Waste Management, the \$40,000 UNR compliance assistance program contract with UNR will be reinstated and redesigning and migrating the Nevada Recycles website and partially reinstating some recycling grants.

An Abandoned Mine Lands Program has been created. A supervisor position and an ES4 position will be added.

The Safe Drinking Water Bureau is adding two new positions to manage the increase in workload realized as a result of the increase in subdivisions going in which require compliance oversight and add development pressures.

The Industrial Site Cleanup Bureau will gain additional contract support. Three NDEP positions were originally approved to oversee construction work associated with the remediation but the Trustee will now conduct that work associated with the BMI complex.

Mr. Lovato discussed EPA and the new administration. He stated NDEP will need to be prepared to respond to imposed funding changes.

Mr. Lovato updated the Commission on Assembly and Senate Bills that have the potential to affect NDEP and the Commission.

AB 50- NDEP introduced this bill for the Safe Drinking Water Program. In a past SEC hearing fee increases were mentioned. When the legislation moved the Safe Drinking Water Program from the Health Division to NDEP, it did not receive a 2/3 stamp which resulted in the SEC not having the authority to approve fee changes. This legislation fixes this issue and makes fines consistent with other NDEP fines.

AB 52-Nevada Division of Minerals (NDOM) proposed to set up a program for regulating dissolved mineral exploration associated with lithium dissolved in brine aquifers. NDOM has been collaborating with NDEP, Water Resources and interested stakeholder. The goal of this is to make sure the process for exploring dissolved lithium resources in Nevada is straightforward and is done in a manner that protects Nevada's fresh water aquifers.

Two bills introduced by legislators related to the VW settlement. AB 416 and SB 418. The general purpose of the bills is to help set priorities for the expenditure of the funds. NDEP has been working with the legislators to make sure the bills do not conflict with the VW settlement, and has had to explain that NDEP has an outreach plan for developing eligible mitigation projects, mainly prioritizing those that result in maximizing the reduction of nitrogen oxide emissions.

SB 315- is a construction waste recycling bill that proposes to mandate recycling rates for Washoe and Clark County as opposed to current legislation which has goals not mandates, and would require the State Environmental Commission to advise municipalities on provisions in franchise agreements with waste collection and disposal companies that would encourage recycling.

SB 251- is a bill introduced by legislators and supported by NDEP that would set up a financial assistance program for underground tank owner operators with financial need to help offset costs of compliance with new regulations that require installation of leak prevention equipment.

AB 205- is a bill that would allow use of alkaline hydrolysis for cremation. The process could generate metals and alkaline water into the environment or sewer system if not treated. NDEP proposed a friendly amendment to the bill requiring notification to NDEP and local public utilities so proper permitting and controls can be put in place.

Mr. Lovato explained that NDEP's role in flood response has largely been to provide technical assistance.

Mr. Lovato also included an update on the Anaconda Site. It was the State's original goal to find a private funding solution for the site, unfortunately that did not happen. The Governor concurred with listing the site on the EPA National Priorities List (NPL) with the condition that that it would be deferred if private funding was achieved. NDEP has made progress on a comprehensive private funding solution with Atlantic Richfield and EPA agreed to postpone finalizing listing the site.

NDEP will also be conducting outreach to the local community and local tribes to understand and address any concerns they may have with deferring the site. Before signing off on the deferral, EPA will want to hear the results of NDEP outreach to the community to determine if significant and valid concerns have been addressed.

Chairman Gans asked for questions or comments from the Commission. Mr. Lovato responded to questions from the Commissioners

**11) Public Comment: (Discussion)** Chairman Gans asked for public comments. There were none.

Chairman Gans asked when the next SEC meeting is scheduled. Ms. King stated the next meeting is scheduled for September 13, 2017.

**10) Adjournment: (Discussion)** Meeting was adjourned at 12:30

*The audio recording of this meeting is available at [http://sec.nv.gov/main/hearing\\_0517.htm](http://sec.nv.gov/main/hearing_0517.htm)*

## **ATTACHMENTS**

**ATTACHMENT 1: Rawhide Mining LLC Penalty Information**

**ATTACHMENT 2: Mackedon and Sons, Inc Penalty Information**

**ATTACHMENT 3: Letter from Gib Mackedon**

**ATTACHMENT 4: Tahoe Western Asphalt, LLC Penalty Information**

**ATTACHMENT 5: T2017-01 Presentation Handout**

**ATTACHMENT 6: T2017-02 Presentation Handout**

# **ATTACHMENT 1:**

Rawhide Mining LLC Penalty Information



## AGENDA ITEM #4: Penalty Presentation

### Rawhide Mining, LLC, Mineral County

#### NOAV #2577 with proposed penalty of \$6,480.00

Rawhide Mining, LLC (Rawhide) operates a gold ore processing facility approximately 55 miles southeast of Fallon, Mineral County, Nevada under the requirements of Class I Air Quality Operating Permit AP1041-2892 (Operating Permit) issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on March 28, 2014.

On December 8, 2015 to December 10, 2015, Rawhide conducted required annual mercury testing on the exhaust stack of System 04 – Tilting Crucible Furnace (S2.004). A final report of the testing results was received by the BAPC on February 9, 2016. Upon review of the final report it was discovered that the results yielded emissions in exceedance of permitted emission limits for System 04. The Operating Permit limits the emissions of mercury to  $1.0 \times 10^{-5}$  grains per dry standard cubic foot (gr/dscf). During testing, average mercury emissions were measured at  $1.62 \times 10^{-5}$  gr/dscf, equating to 162% of the permit limit.

On August 25, 2016, an enforcement conference was held with Rawhide to review the findings, afford Rawhide an opportunity to provide evidence of extenuating facts relative to the findings, and to determine whether issuance of the Notice of Alleged Violation and Order (NOAV) was or was not warranted. Rawhide was unable to present any information to indicate that the violation had not occurred as alleged. On February 21, 2017, one (1) NOAV was issued as follows:

- **NOAV #2577:** Failed Source Test (exceedance of permitted emissions limit).

The BAPC reviewed the penalty matrix and provided the recommended penalty amount of **\$6,480.00** for NOAV #2577 considering the base penalty, extent of deviation, and penalty adjustment factors. This represents Rawhide's first air quality violation within the last 60 months. No appeals were filed related to NOAV #2577.

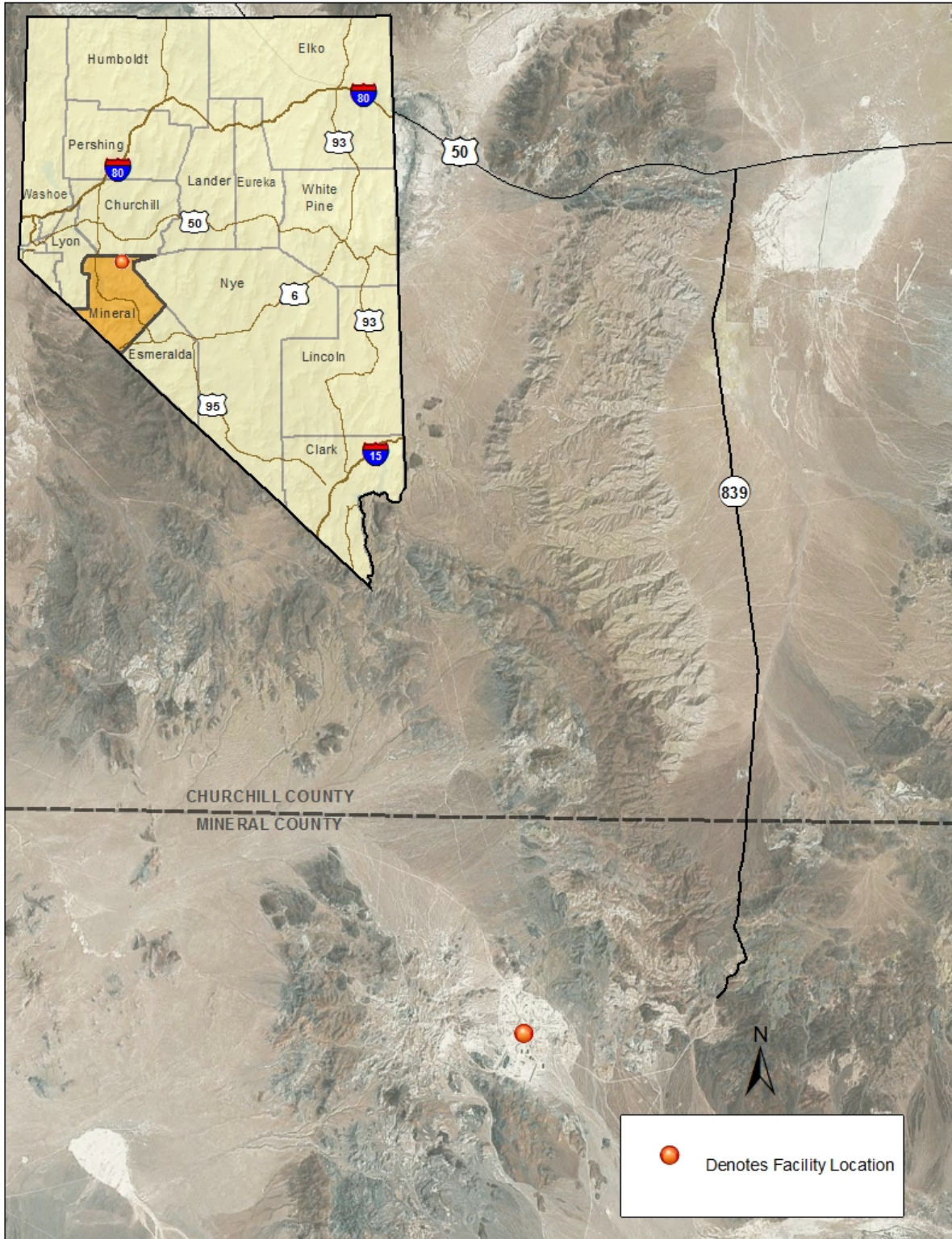
The BAPC total recommended penalty for the NOAV is **\$6,480.00**.

## AGENDA ITEM #4: Vicinity Map

### Rawhide Mining, LLC, Mineral County

Physical Address: Approximately 55 miles southeast of Fallon, Nevada off of State Route 839

Coordinates: North 4,318.511 KM, East 379.804 KM – UTM Zone 11 (NAD 83)



## **AGENDA ITEM #4: Photo Documentation**

### **Rawhide Mining, LLC, Mineral County**

Note: Photos have not been provided as the equipment listed in NOAV#2577 is related to proprietary information in the gold finishing process at Rawhide.

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

**For:** Rawhide Mining, LLC, AP1041-2892 (FIN A0406)  
**Violation:** Failed Source Test (exceedance of permitted emissions limit)  
 System 04 – Tilting Crucible Furnace (S2.004)

**NOAV:** 2577

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table = **\$4,000.00**

**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 = **162% of permit limit**  
**Adjustment = 1.62**

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

<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

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):**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Deviation Factors 1 x 2 x 3:** **From 1A: 1.62**

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =**  
**\$4,000 x 1.62 = \$6,480.00**

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

<b>\$6,480.00</b>	<b>X</b>	<b>1</b>	<b>=</b>	<b>\$6,480.00</b>
Dollar Amount		Number of Units		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><b>\$0.00</b></u> <b>Economic Benefit</b>
<b>Subtotal</b>	<u>\$6,480.00</u> Total Gravity Fine	+	<u>\$0.00</u> Economic Benefit	=	<u><b>\$6,480.00</b></u> <b>Fine Subtotal</b>

**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     N/A     %
- Total Penalty Adjustment Factors - Sum of A & B:**     0     %

**IV. Total Penalty**

<u>\$6,480.00</u> Penalty Subtotal (from Part II)	X	<u>0%</u> Total Adjustment Factors	=	<u><b>\$0.00</b></u> <b>Total Adjustment</b>
<u>\$6,480.00</u> Penalty Subtotal (from Part II)	+	<u>\$0.00</u> Penalty Increase or Decrease	=	<u><b>\$6,480.00</b></u> <b>Total Penalty</b>

**Assessed by:**                     Robert Whited                     **Date:**                     2/21/17

**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:**

<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>	$r < 1.2$	(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)
	$r \geq 1.2$	proportional to $r$

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

# **ATTACHMENT 2:**

Mackedon and Sons, Inc Penalty Information

## AGENDA ITEM #5: Penalty Presentation

### L. Mackedon & Sons, Inc., Churchill County

#### NOAV #2587 with total proposed penalty of \$4,000.00

L. Mackedon & Sons, Inc. (LMS) operates a concrete batch plant facility in Fallon, Churchill County, Nevada. Previously, LMS operated under Class III Air Quality Operating Permit AP1611-1543, issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 12, 2005. The Class III Air Quality Operating Permit AP1611-1543 expired on May 12, 2010, with no renewal application being submitted to the BAPC.

On October 28, 2015 the BAPC received a phone call from the legal counsel of LMS, Allison MacKenzie Law Firm, stating that LMS had not held a permit since 2010 as a result of an oversight. LMS coordinated with the BAPC to submit a new permit application which was received by the BAPC on November 12, 2015 and deemed complete on November 26, 2015. LMS now operates under Class III Air Quality Operating Permit AP3273-3707, issued by the BAPC on August 22, 2016.

On December 12, 2016, the BAPC held an enforcement conference with LMS to review the findings, afford LMS an opportunity to provide evidence of extenuating facts relative to the findings, and to determine whether issuance of the Notice of Alleged Violation and Order (NOAV) was or was not warranted. LMS was unable to present any information to indicate that the violation had not occurred as alleged. On February 22, 2017, one (1) NOAV was issued as follows:

- **NOAV #2587:** Failure to apply for and obtain an air quality operating permit.

The BAPC reviewed the penalty matrix and provided the recommended penalty amount of **\$4,000.00** for NOAV #2587 considering the base penalty, extent of deviation, penalty adjustment factors, and the facility's financial ability to pay fines. This represents LMS' first air quality violation within the last 60 months. No appeals were filed related to NOAV #2587.

The BAPC total recommended penalty for the NOAV is **\$4,000.00**.

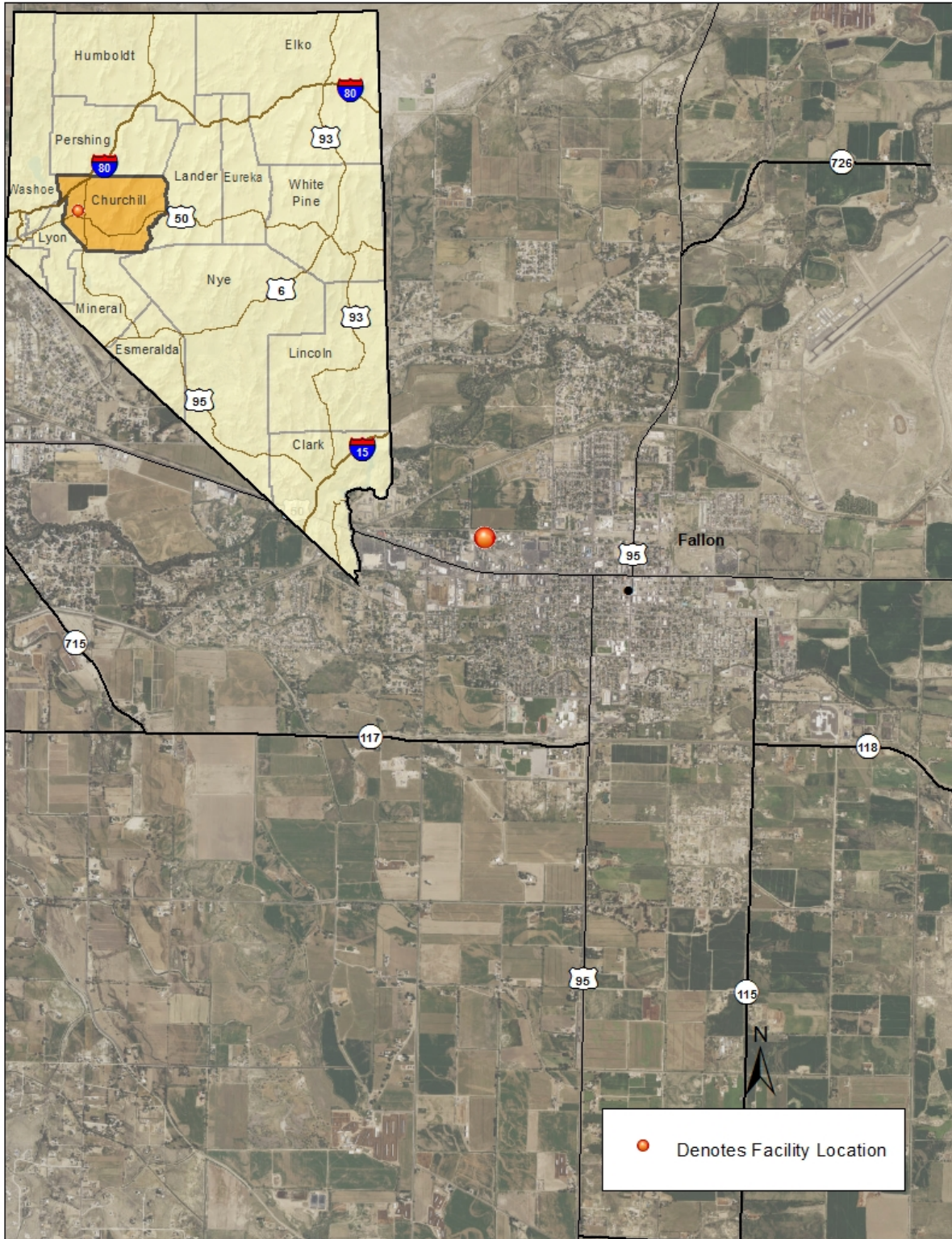


## AGENDA ITEM #5: Vicinity Map

### L. Mackedon & Sons, Inc., Churchill County

Physical Address: 1550 Auction Road, Fallon, Nevada 89406

Coordinates: North 4,371.344 KM, East 345.68 KM – UTM Zone 11 (NAD 83)



**AGENDA ITEM #5: Photo Documentation**

**L. Mackedon & Sons, Inc., Churchill County**



**Photo 1:** L. Mackedon & Sons, Inc. Concrete Batch Plant.

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

**For:** L. Mackedon & Sons, Inc., AP1611-1543 (FIN A0126)

**Violation:** Failure to Apply for and Obtain an Operating Permit

**NOAV:** 2587

**I. Gravity Component**

**A. Base Penalty:** \$1,000 or as specified in the Penalty Table = **\$800.00**

**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.**

<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

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):**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
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) = **No Deviation Factors**  
= **\$800.00**

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

\$800.00	X	5	=	\$4,000.00
Dollar Amount		Number of Years		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><b>\$0.00</b></u> <b>Economic Benefit</b>
<b>Subtotal</b>	<u>\$4,000.00</u> Total Gravity Fine	+	<u>\$0.00</u> Economic Benefit	=	<u><b>\$4,000.00</b></u> <b>Fine Subtotal</b>

**III. Penalty Adjustment Factors**

<b>A. Mitigating Factors</b>		<u>N/A</u> %
<b>B. History of Non-compliance</b>		
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%)	<u>N/A</u> %
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) =	5% X =	<u>N/A</u> %
<b>Total Penalty Adjustment Factors - Sum of A &amp; B:</b>		<u><b>0</b></u> %

**IV. Total Penalty**

<u>\$4,000.00</u> Penalty Subtotal (from Part II)	X	<u>0%</u> Total Adjustment Factors	=	<u><b>\$0.00</b></u> <b>Total Adjustment</b>
<u>\$4,000.00</u> Penalty Subtotal (from Part II)	+	<u>\$0.00</u> Penalty Increase or Decrease	=	<u><b>\$4,000.00</b></u> <b>Total Penalty</b>

**Assessed by:** Gregg Rosenberg      **Date:** 2/22/17

**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:**

<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>	$r < 1.2$	(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)
	$r \geq 1.2$	proportional to $r$

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

# **ATTACHMENT 3:**

Letter from Gib Mackedon

## Valerie King

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**From:** Gib Mackedon <mack@phonewave.net>  
**Sent:** Wednesday, May 3, 2017 6:55 AM  
**To:** Valerie King  
**Subject:** response

Valerie

I hope this gets to you in time..I am burning both ends of the candle presently so I will do my best.

This email is in regards to my now 1 1/2 year long experience with NDEP. In November of 2015 it came to my attention that I had a serious issue with an air quality permit. I immediately made contact with NDEP thru my attorney expecting the worst. From my initial contact, my experience with Travis and his staff (Greg ect) has been top notch. I run a very small business and at times it has been just myself. The person<sup>all</sup> I dealt with thru the permitting process were very helpful, never over-demanding of my time and extremely professional.

In December <sup>7</sup> of 2016 I met at the NDEP office in Carson with Travis and his staff to discuss the violations associated with my situation. Once again I was treated very fairly and professionally. At no time during this entire process did I feel intimidated or overrun. I felt that the outcome of this situation was more than in my favor. For me to protest the fine levied or my treatment throughout this process would be criminal.

I would like to be in attendance today, but am out of town for work

Once again thanks to Travis, his staff, and the many whom helped me through this..Scott Bob ect.

Gib Mackedon

Valerie sorry for the briefness of this so much more I would like to say please feel free to adlib from our conversation..I am typing this from the road so it is not my best work

Thank you again

# **ATTACHMENT 4:**

Tahoe Western Asphalt, LLC Penalty Information



## AGENDA ITEM #6: Penalty Presentation

### Tahoe Western Asphalt, LLC, Carson City

#### NOAV #2601 with total proposed penalty of \$1,500.00

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 October 20, 2016, BAPC staff was driving by the TWA facility on Highway 50 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 stopped at the facility to conduct an EPA Method 9 visible emissions observation test and determined that the average opacity exiting the stack was 37.3%, equating to 187% of the permit limit.

On December 6, 2016, an enforcement conference was held with TWA to review the findings, afford TWA an opportunity to provide evidence of extenuating facts relative to the findings, and to determine whether issuance of the Notice of Alleged Violation and Order (NOAV) was or was not warranted. TWA was unable to present any information to indicate that the violation had not occurred as alleged. On January 24, 2017, one (1) NOAV was issued as follows:

- **NOAV #2601:** Failed visible emissions observation for opacity.

The BAPC reviewed the penalty matrix and provided the recommended penalty amount of **\$1,500.00** for NOAV #2601 considering the base penalty, extent of deviation, and penalty adjustment factors. This represents TWA's first air quality violation within the last 60 months. No appeals were filed related to NOAV #2601.

The BAPC total recommended penalty for the NOAV is **\$1,500.00**.

## AGENDA ITEM #6: Vicinity Map

### Tahoe Western Asphalt, LLC, Carson City

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

Coordinates: North 4,527.14 KM, East 357.14 KM – UTM Zone 11 (NAD 83)



**AGENDA ITEM #6: Photo Documentation**

**Tahoe Western Asphalt, LLC, Carson City**



**Photo 1:** Tahoe Western Asphalt, LLC Asphalt Plant  
(image from BAPC video on October 20, 2016).



**Photo 2:** During visible emission observation showing average opacity of 37.3%.  
(image from BAPC video on October 20, 2016).

**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 Visible Emissions Observation for Opacity  
 System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001)  
**NOAV:** 2601

**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.**

<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

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):**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
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) = **\$600 x 2.5 = \$1,500.00**

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

<u>\$1,500.00</u>	X	<u>1</u>	=	<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><b>\$0.00</b></u> <b>Economic Benefit</b>
<b>Subtotal</b>	<u>\$1,500.00</u> Total Gravity Fine	+	<u>\$0.00</u> Economic Benefit	=	<u><b>\$1,500.00</b></u> <b>Fine Subtotal</b>

**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     N/A     %
- Total Penalty Adjustment Factors - Sum of A & B:**     0     %

**IV. Total Penalty**

<u>\$1,500.00</u> Penalty Subtotal (from Part II)	X	<u>0%</u> Total Adjustment Factors	=	<u><b>\$0.00</b></u> <b>Total Adjustment</b>
<u>\$1,500.00</u> Penalty Subtotal (from Part II)	+	<u>\$0.00</u> Penalty Increase or Decrease	=	<u><b>\$1,500.00</b></u> <b>Total Penalty</b>

**Assessed by:**                     Robert Wimer, Sr.                     **Date:**                     1/24/17

**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:**

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Major pollutant	$r < 1.2$	(none)
	$r \geq 1.2$	proportional to $r$

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

# **ATTACHMENT 5:**

T2017-01 Presentation Handout

# Proposed Regulation of the State Environmental Commission

## T2017-01

A regulation relating to air pollution: revising provisions governing public notices; and providing other matters properly relating thereto.

### Overview

On October 18<sup>th</sup>, 2016 the USEPA published the final revision rule to Public Notice Provisions for among others PSD and Title V

- Removes the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper
- Instead, requires electronic notice (e-notice) with the additional requirement of electronic access (e-access) of at least the draft permit
- “Over the years, [...], the availability of and access to the Internet and other forms of electronic media have increased significantly in the United States. [...] circulation of newspapers and other print media has declined, making printed newspaper notice less effective [...]”
- Air Program - Better management of internal resources and improvement in permit application processing.

**No changes to the content or timing of the public notices**



The changes we are proposing are for the most part very similar to each other, but are applied in different subsections of our regulation

[The Director shall:] Cause to be published ~~{a notice in one or more newspapers of general circulation in the area in which the Class II general operating permit is applicable;}~~ *on an Internet website designed to give general public notice an electronic copy of the Director's notice of proposed action and the draft permit;*

- 445B.3364.7(a) Operating Permit to Construct for Class I
- 445B.3395.7(a) New Operating Permit or significant revision of an Operating Permit for Class I
- 445B.3477.2(a) Class II General Permit
- 445B.3657.5(a) Determination of de-minimis mercury emissions
- 445b.3677.6(a) Review of mercury operating permit
- 445b.3683.5(a) New or revision of operating permit to construct for mercury program
- 459.953465.1(a,b) CAPP – Receipt of application and period for public comment
- 486A.140.3 Designation for alternative fuel

## EXCEPTION

445B.3457.6(d) - New Operating Permit or revision Class II  
~~[Provide notice of the Director's proposed action and a copy of the draft Class II operating permit to a public library in the area in which the proposed new Class II source or the proposed modification to the existing Class II source is located for posting to ensure that adequate notice is given to the public;~~

- Problems in delivering hard copies to libraries (variable or limited opening hours). Limited understanding of the content of the notice
- Having to drive to libraries to delivery hard copies
- Survey across libraries on access of these notices revealed no interest.
- Subsection (b) already provides enotice by website  
*(b) Cause to be published on an Internet website designed to give general public notice an electronic copy of the Director's notice of proposed action;*

# Proposed Regulation of the State Environmental Commission T2017-01

ndep.nv.gov

The screenshot shows the NDEP website homepage with a navigation menu, a search bar, a banner image, and several content sections.

**Navigation Menu:** NDEP Programs & Services, Public Information & More, NDEP Unique Websites, Financial Assistance, NDEP Online Services, Agency Contact Info., More About NDEP.

**Header:** State of Nevada, Department of Conservation & Natural Resources, Nevada Division of Environmental Protection, NDEP.nv.gov. Includes a Google Custom Search bar.

**Banner Image:** A composite image showing a mountain landscape, a sunset over water, and a lake with trees.

**Administrator:** Greg Lovato, Administrator. Includes a "Join NDEP Electronic Mailing List" button and a "Program — Web Pages" dropdown menu.

**Mission Statement:** This website contains information designed to help individuals, companies, and governmental entities comply with environmental laws and regulations contained in the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC). Our mission is to preserve and enhance the environment of the state in order to protect public health, sustain healthy ecosystems, and contribute to a vibrant economy. NDEP's hours of operation are from 8:00 a.m to 5:00 p.m. Monday through Friday. Contact information is located here or you can call us at (775) 687-4670 [Carson City] or (702) 486-2850 [Las Vegas].

**NDEP Quick Links:**

- ▶ Spill Reporting Hotline
- ▶ Public Notices
- ▶ Permitting Guide
- ▶ Regulations
- ▶ E-Payment Website
- ▶ Map & GIS Resources
- ▶ News Releases
- ▶ Report Bad Links
- ▶ Suppl. Env. Projects (SEP)
- ▶ Topic Index
- ▶ Site Map
- [US EPA External Links]
- ▶ Envirofacts [USEPA]
- ▶ US EPA Data In Nevada
- ▶ Report Violations to EPA

**New Documents & More:**

- Volkswagen Settlement - Nevada Mitigation Fund
- Lead in Nevada's Drinking Water - Frequently Asked Questions
- Lead Compliance Data for Nevada Public Water Systems
- RCRA Guidance on air pollution control wastes at mining operations
- NDEP Strategic Plan 2016 - 2020
- Nevada Guide to Environmental Permits for New Business

**New Announcements & Initiatives:**

- 2016 Recycled Art Contest Winners
- Anaconda Site Information Page
- Advisory Committee on Transportational Storm Water Management (ACTSWM) website now online
- 10/20/2015: DRI Interim Final Report, Hydraulic Fracturing in the Upper Humboldt River Basin, Aquifer Quality Assessment Program
- July 2015: The Nevada Division of Environmental Protection



## NDEP Public Notices

[Join NDEP Electronic Mailing List](#) ▼

[Program — Web Pages](#) ▼

**About This Page** — Presented below are public notices for the Division of Environmental Protection (NDEP). The Notices are grouped by NDEP Bureaus (i.e., Air Quality, Water Pollution Control, Mining Regulation, etc.). All notices and supporting documents such as fact sheets, draft permits, comment response documents are available in [Adobe PDF file format](#) and can be read online or downloaded for printing. Please note the date for each Public Notice is the web posting date.

### Legal Requirements

State agencies, boards, and commissions that maintain a website are required by law to post public notices on the Internet. Other laws such as the [Nevada Administrative Procedures Act](#) and the [Nevada Open Meeting Law](#) specify the types of notices that must be posted, along with the content of notices and posting time periods.

### Find Public Notices By NDEP Organizational Area

- [Air Pollution Control](#)
- [Air Quality Planning](#)
- [Board For Financing Water Projects](#)
- [Clean Water SRF](#)
- [Drinking Water SRF](#)
- [Corrective Actions](#)

## Air Pollution Control

Date	Type of Proposed Actions	Applicant Name and/or Permittee	Download Notice
04/03/17 	Notice of Proposed Action  Application for a revision of Class II Air Quality Operating Permit, AP3295-2187.02 (FIN A0451)	M-I Swaco P.O. Box 370 Battle Mountain, NV 89820	<a href="#">Download Notice</a> <a href="#">Renewal-Revision</a> <a href="#">Notice-Director's Review</a>
03/15/17 	Notice of Proposed Action  Application for an Operating Permit to Construct (OPTC) roll-over to Class I Air Quality Operating Permit AP4953-1148.02 (FTN A0018)	Refuse, Inc. as Lockwood Regional Landfill 2401 Canyon Way Sparks, NV 89434	<a href="#">Download Notice</a> <a href="#">Specific Draft Permit</a> <a href="#">General Draft Permit</a>
02/17/17	Notice of Proposed Action  Application for a new Class II Air Quality Operating Permit AP3273-3729	Teichert Materials dba American Ready Mix 1475 East Greg St. Sparks, NV 89431	<a href="#">Download Notice</a> <a href="#">Director's Review</a> <a href="#">Draft Permit</a>

## Workshop and Public Notice Information

- Workshop was noticed on February 17,2017
  - General List
  - County Commissioners
  - Industry and stakeholders
  - Libraries
  - Newspapers
- Workshop was held on March 21, 2017
  - 2 people attending
  - No comments received

# **ATTACHMENT 6:**

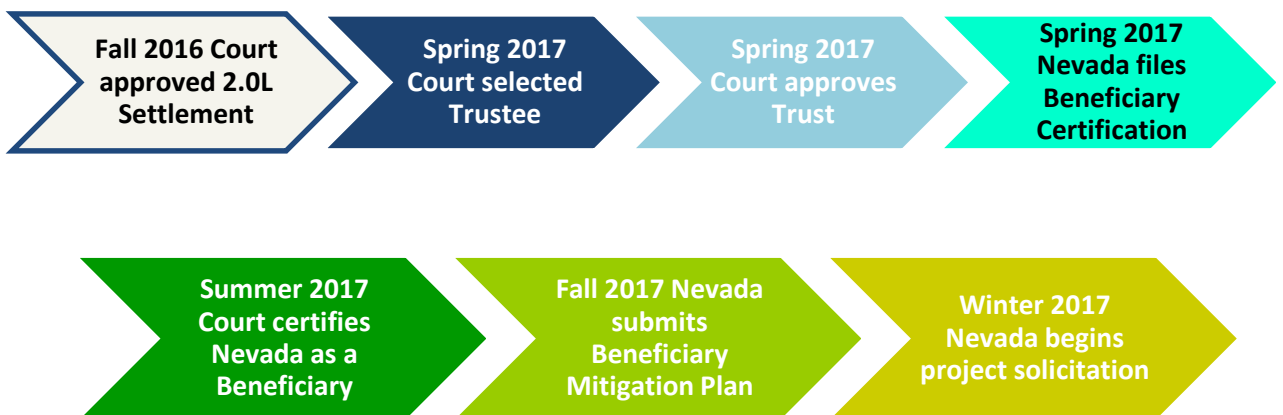
T2017-02 Presentation Handout

# Proposed Regulation of the State Environmental Commission T2017-02

A regulation relating to air pollution; revising provisions governing certain motor vehicles equipped with an incorrectly installed device for the control of air pollution.

Purpose of this amendment is to make Nevada eligible to file the Beneficiary Certification form and become a Beneficiary with the VW National Mitigation Trust Fund

## Timing of VW Mitigation Fund



**Beneficiary Certification form requires that Beneficiary's "[s]hall not deny registration to any Subject Vehicle based solely on... The presence of a defeat device."**

**- Appendix D-3, Section 9(a)**

**Section 1.** NAC 445B.575 is hereby amended to read as follows:  
**NAC 445B.575 Device to control pollution: General requirement; alteration or modification; exemption for certain wholesale transactions; audits; repair of noncompliant motor vehicles; maintenance of records of noncompliant motor vehicles.** ([NRS 445B.210](#), [445B.770](#), [445B.785](#))

1. Except as otherwise provided in this section, a person shall not:
  - (a) Sell, offer to sell, display for sale, operate or permit the operation of or leave standing any motor vehicle which is required by state or federal law to be equipped with a device for the control of pollution unless the device is correctly installed and in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.
  - (b) Disconnect, alter or modify any such required device.
2. *The provisions of subsection 1 do not apply to motor vehicles subject to a settlement agreement entered into by the State of Nevada, an Agency of the State of Nevada, or to which the State of Nevada is a beneficiary that is intended to mitigate the effects of any device for the control of pollution which is not correctly installed or in operating condition in accordance with the specifications of the vehicle manufacturer and any applicable state or federal statute or regulation.*

- Per Consent Decree, at least 85% of the 2-liter vehicles will be fixed or out of the market by June 30, 2019.
- This amendment does not affect how the funds will be used in Nevada, it just allows Nevada to apply for Beneficiary Status. The Mitigation Plan (i.e., principles and guidelines) is currently being developed by the NDEP under the advisement of the Nevada Committee on the Control of Emissions from Motor Vehicle (aka I/M Committee).



## Workshop and Public Notice Information

- Workshop was noticed on March 24, 2017
  - General List
  - County Commissioners
  - Industry and stakeholders
  - Libraries
  - Newspapers
  - Emission Station Managers and Inspectors (via EC Blast)
  - Motor vehicle dealers
- Workshop was held on April 12, 2017
  - 1 person attending, sitting for Sierra Club but not officially representing it, with a comment:

*“The Sierra Club being the Sierra Club, we must protest the idea that these vehicles continue to be on the road. However, life being what it is, we don’t want the perfect to become the enemy of the good. Therefore, we think this is a great idea and we look forward to working with you on whatever comes out of this going forward. Thank you very much.”*