



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

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

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of September 13, 2017 10:00 AM

Nevada Legislative Building, Room 4100, 4th Floor
401 South Carson Street
Carson City, NV

Members Present:

E. Jim Gans, Chairman
Tom Porta, Vice Chairman
Mark Turner
Cary Richardson
Jason King
Rich Perry
Kacey KC

Members Absent:

Jim Barbee
Kathryn Landreth
Tony Wasley

SEC Staff Present:

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

Members of the Public Present:

Robert Matthews, Tahoe Western Asphalt
Clay Brust, Tahoe Western Asphalt
Morgan Friend, DMV
Ivie Hatt, DMV
Melanie Harris
Carol Lundberg
Melissa Fraker
Michael Lienhard
John Dyz
C. Clark
L. Martinsen
Paul Dixon
Robert & Judy Lucas
Teri Ford
Edward H. Dean
Emmett Bishop
Maria Palamy
Barry Smith, NV Press Association
Allen Biaggi, NV Mining Association
Joe Beetler, NV Mining Association

Chris Callaway
Ann Weaver
Jody Erb
Katheen Erb
Brenda Sue
Dennis Kiff
Rich Penny
Dave Lockhart
Wayne Howle, Office of AG
C.D. Eagleton
Joe Beither
Juan Cadena
William & Joanne Detter
Rosa Irigoyen
Ed Wawrytko

Members of the Public Present in Las Vegas

Susan Fisher, C & S Waste
Jeremy Walters, Republic Services
Kami Dempsey, LV Review Journal
Jennifer Simich, Republic Services

BEGIN SUMMARY MINUTES

1) Call to Order, Roll Call, Establish Quorum: (Discussion) The meeting was called to order at 10:04 a.m. by Chairman Jim Gans. Valerie King, Executive Secretary, confirmed the hearing was properly noticed and that a quorum was present.

2) Public Comments: (Discussion) Chairman Gans and Valerie King instructed the members of the public who wanted to comment on odors to wait until agenda item No. 5, which would be a presentation on odors and the Nevada Division of Environmental Protection's (NDEP) authority to enforce odors. Chairman Gans asked if there was any other public comment.

Comment: Ed Wawrytko, a resident of the Highland Estates in Carson City, communicated his concerns about chemical showers he believed to have come from the Tahoe Western Asphalt Company, Inc. (TWA).

3) Approval of the Minutes for the May 3, 2017 SEC Meetings: (Action Item) Chairman Gans requested comments from the Commission regarding the May meeting minutes.

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

Air Penalty

4) Tahoe Western Asphalt, LLC, Notice of Alleged Violations & Penalties: (Attachment 1) Chairman Gans explained that agenda item Nos. 4a through 4e would be the individual penalties. He and Valerie King stressed that public comments during these agenda items be focused only on the penalties and the way they were calculated.

Commissioner Richardson wanted to go on record as having done business with Robert Matthews legal counsel, a member of Tahoe Western Asphalt, LLC (TWA), in the past but did not have business relations with him at the time of the meeting. He stated his business relations ended over seven years ago; therefore, he did not have a conflict of interest and wanted to participate in the hearing. Commissioner Turner stated that he, too, had done business with TWA both directly and indirectly and wanted to recuse himself from the vote.

Lisa Kremer, Chief, Bureau of Air Pollution Control (BAPC), Nevada Department of Environmental Protection (NDEP), provided a quick summary of the history related to TWA. She stated that TWA operated a propane-fired drum dryer for the purpose of producing asphalt in Carson City, Nevada under the conditions of Class II Air Quality Operating Permit AP1611-3748, which was issued by the BAPC on May 23, 2016. She stated that as a Class II stationary source, the permit was valid for a period of 5 years and would expire on May 23, 2021. She noted that TWA began operation of the asphalt plant on July 9, 2016, and the facility was located in a pit adjacent to US Highway 50 on the east side of Carson City near the Pick-N-Pull and the V&T Railroad station, approximately one quarter mile west of the Carson Highlands subdivision.

4a) Tahoe Western Asphalt, LLC, Notice of Alleged Violations No. 2619 & 2620: (For Possible Action) Lisa Kremer introduced the penalty. She stated the recommendation was to approve the proposed penalty of \$2,520.00 for TWA (Attachment 2) for failure to conduct initial performance testing for Particulate Matter (PM), with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) and particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM2.5), as specified in Notice of Alleged Violation (NOAV) No. 2619.

She stated that a Class II Air Quality Operating Permit requires initial performance testing for PM, PM10, and PM2.5 on System 02 - Asphalt Plant: Drum Dryer Mixer/Burner (Emission Unit S2.001) within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. TWA provided notification to the BAPC that the plant began operation on July 9, 2016. As such, the initial performance tests should have occurred no later than January 5, 2017. The BAPC staff began written correspondence with TWA on October 12, 2016, notifying the Responsible Official of testing requirements in the air quality operating permit. She stated that regular correspondence continued in an effort to gain compliance with all requirements of the operating permit via email, phone conversations and meetings, both in the BAPC office and at the TWA site. However, testing did not occur until April 25, 2017. Per records provided by TWA, the facility operated 59 days and produced a total of 16,642 tons of asphalt between July 9, 2016 and January 5, 2017.

Ms. Kremer then provided background on what particulate matter is. She stated that PM is the term for a mixture of solid particles and liquid droplets found in the air. Some particles, such as dust, dirt, soot, or smoke, are large or dark enough to be seen with the naked eye. Others are so small they can only be detected using an electron microscope. Environmental impacts include: visibility impairment, environmental damage and aesthetic damage. The size of particles is directly linked to their potential for causing health problems. Small particles less than 10 micrometers in diameter pose the greatest problems, because they can get deep into your lungs, and some may even get into your bloodstream. Exposure to such particles can affect both your lungs and your heart. Small particles of concern include "inhalable coarse particles" such as those found near roadways and dusty industries, which are larger than 2.5 micrometers and smaller than 10 micrometers in diameter. "Fine particles" are those found in smoke and haze and are 2.5 micrometers in diameter and smaller. Numerous scientific studies have linked particulate matter exposure to a variety of problems, including: premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.

Ms. Kremer then provided the timeline related to the enforcement action. On July 9, 2016, TWA began operation. On October 12, 2016, the BAPC staff began written correspondence with TWA regarding testing requirements in the air quality operating permit. On January 1, 2017, it was 180 days from initial startup, the deadline for initial performance testing. On April 25, 2017, TWA conducted initial performance testing. On June 13, 2017, the BAPC issued Draft NOAV No. 2619. On July 11, 2017, an enforcement conference was held in the BAPC offices. On July 19, 2017, the BAPC issued Final NOAV No. 2619 and sent it to the address of record via certified mail. On July 20, 2017, a courtesy copy of NOAV No. 2619 was sent to the responsible official via email. At this point, Ms. Kremer asked Mr. Travis Osterhout, supervisor of the BAPC Compliance and Enforcement Branch, to explain how the penalty was calculated using the penalty matrix.

Mr. Osterhout explained how the penalty was calculated using the penalty matrix found in [\(Attachment 2\)](#).

Following the penalty matrix explanation, Vice Chair Porta asked why it took so long for TWA to get the compliance test. He noted that it had been over six months even though NDEP wrote and emailed them. He asked what the reason was.

Mr. Osterhout responded that NDEP had contacted Mr. Robert Matthews, owner of TWA, and reminded him of the requirements. He stated NDEP had many meetings whereby Mr. Matthews indicated he was going to end operations for the season in a short order of time, but instead continued to operate because he found additional jobs. Mr. Osterhout stated that NDEP asked him again, but he continued to operate. He ceased operation between approximately January through early April, and TWA tested on April 25.

Commissioner King asked about the multiplier in the penalty matrix. He asked if the multiplier of "4" was for a number of recent violations multiplied times the five percent. He asked if the number four includes violations in Agenda items 4a through 4e, which have not been decided upon.

Mr. Osterhout responded that of the four previous violations, three were minor violations that were addressed through administrative fines and did not go before the SEC. They were addressed pursuant to NAC 281 whereby NDEP is provided authority to issue fines. The fourth violation was heard before the SEC on May 3, 2017.

Chair Porta asked if in the following violations the multiplier increased based upon acceptance of the previous NOAV.

Mr. Osterhout responded that he was correct. The regulations read that the multipliers are based on any previous violations that have occurred within the previous five years.

Chairman Gans invited comments from anyone who wanted to speak on behalf of TWA.

Mr. Clay Brust, attorney with Robison, Simons, Sharp, and Brust and representing TWA, stated he was very happy that this is not a witch hunt. He stated his client is also concerned about compliance and wants to comply. He stated that Mr. Matthews was raised and went to high school in Carson City, Nevada. He stated Mr. Matthews has no intention to ruin the air in Carson City and that he is trying to comply. As the department already noted, TWA has its permits. TWA notified the department as soon as operations started. They continued to give information to the department and are fully permitted. This test slipped through the cracks because there was confusion about the testing. They were getting notices, but they shut down. The reason they could not do the test immediately after January was because they closed down for three months. They were not operating. As soon as they came back into operation, they tested. That was in April. They knew that was their responsibility to do that.

Mr. Brust stated he thought the three months as a multiplier should be looked at with the consideration that they were not operating during those three months, so they could not have test during that time. Mr. Brust asked that the base fine of \$600 be used for the first major violation. He indicated that his client had not contested any of the violations. TWA is not out there trying to fight everything and operate dirty. Mr. Brust stated that TWA admitted to all of the violations and to all of the tests. He stated that they are here today to just talk about the penalties, to put some light from their perspective on the penalties and why they think some of the penalties are excessive. Mr. Brust asked the Commission that for this test and this penalty, to consider that his client was not operating.

Mr. Brust stated that his client is not here to try to run a dirty plant. He said that not only does Mr. Matthews have a long history with the community, but all the people involved in TWA do as well. Included is one of its other investors who had a company in the area that started a long time ago. Mr. Brust stated that they went to high school in the area also. He noted that Mr. Maddox went to high school in Carson City and started Eagle Valley Construction, one of the most famous companies to come out of Carson City in the mid-80s. He stated that Mr. Maddox and his brother started their company with a truck and a shovel and built it into something that benefitted the community. He said that TWA company will benefit the community as well. He said that it is trying to run clean, and asked that the Commission consider that. He noted the public backlash and stated that they do not run a gasoline plant; they run a propane plant. He said that there are other gasoline companies near his client's company; his client is not spewing gasoline into the air; and the company does not even use it.

Mr. Matthews stated that there is no gasoline on site of his project. He began to discuss Pick-N-Pull, which is an auto dismantle business next door to his business, but was interrupted by comments from the public.

Chairman Gans asked the public to be respectful of testifiers.

Mr. Matthews continued that there is no gasoline onsite. He stated he does not use gasoline for anything; rather, he uses diesel and propane. He indicated there may be a half-gallon container in the storage shed. He stated that complaints regarding gasoline odors were not coming from TWA.

Chairman Gans stated that his point was not the point of this discussion. He asked if there were any questions from the Commissioners.

Commissioner Porta asked Mr. Matthews if he responded to NDEP after receiving correspondence regarding the test.

Mr. Matthews stated that he did respond. He said that what the permit says is to test within 60 days of your maximum, which he never met, or 180 days. He said it was very vague whether it was operating days or actual permitted days. He said that it is vague, and staff has admitted that to him. He stated they ran one day in December, December 28, for a Maverick gasoline station, and did not come back until April. He said that he was in Florida for five months and that the gates were shut and locked. He said that when he returned, he had complaints that Travis and staff had fielded that TWA was still creating dust. He claimed that no one was onsite.

Chairman Gans asked Mr. Osterhout if he would like to respond.
Mr. Osterhout indicated he did not.

Ms. Kremer added that the purpose of the initial tests is to demonstrate initial compliance. Therefore, when they operated 59 days and a total of 16,000 tons of asphalt, an initial test is necessary to know how the system is operating.

Commissioner Porta asked if Ms. Kremer agreed that TWA did respond to NDEP's emails and correspondence as they were trying to figure out when to source test and what this source test was.

Ms. Kremer responded that she did not have personal experience with that. Mr. Osterhout and his staff had correspondence with TWA, and she was made aware of the situation.

Mr. Osterhout responded that his team had correspondence with Mr. Matthews. They met with him at the NDEP office and at the TWA site on multiple occasions to inform Mr. Matthews that he needed to test. They informed Mr. Matthews that there were concerns and NDEP was receiving a number of complaints. Mr. Osterhout stated that NDEP informed Mr. Matthews that they would like to get the initial testing done to demonstrate to the community that his system was not operating at an unhealthy level. That proof can only be obtained from the test. He stated that Mr. Matthews provided NDEP a letter in December regarding a source-test company that he was trying to contract with to conduct the test. For reasons Mr. Osterhout did not know, it did not happen. Mr. Matthews then hired another company in April when he began operations.

Commissioner King stated he wanted to be clear on this. He stated it looked like TWA started operating on July 9, 2016. Did they know at that time that they had a limit of 180 days to perform this testing?

Ms. Kremer responded they were made aware of that. She stated that when NDEP issues a permit, a letter goes out and at the very bottom of the letter it states, "Please review your permit that is attached and posted at your offices. Please be aware of the monitoring, record keeping, and testing

requirements of this permit. If you have any questions, you are to contact our office.” Ms. Kremer said they are made aware when they get the permit and that there is a table in the permit that shows initial performance testing. She said they know exactly in this table what has to be done. In the table, it talks about the 60 days and up to the 180 days. It is very clearly written in the table of the permit. Ms. Kremer said they are given an opportunity to review their permit and contact BAPC if they have any questions or concerns regarding being able to take tests or what anything means or what they need to do. She said that yes, they knew.

Mr. Osterhout added that they had multiple conversations with Mr. Matthews in the NDEP office where they talked to Mr. Matthews about requirements of the permit. He stated NDEP offered to go through the permit with him and he took them up on it. His partner was also there. He said staff stepped through the permit to give them a run-down of the requirements. Mr. Matthews did operate tonnage-wise on days in November at or above the amount of tons that he ran in April to conduct his testing. He informed NDEP on multiple occasions that he was not running long enough loads to get a valid test.

Commissioner Perry asked if “initial performance testing,” in this case, means that this was a new facility or a facility going through re-permitting?

Mr. Osterhout replied that this was a new permit and required initial performance testing. He stated that NDEP must know how the facility is operating to make sure they are operating within the required parameters of their permit, which ensures they are not violating the national or Nevada ambient air quality standards and are not a health risk.

Commissioner Perry asked if this was an additional production line in an existing plant or if it was relocated to this particular site at this time.

Mr. Osterhout responded that it was located at this particular site at this time. His understanding was that it had been purchased from a different state and brought to this location.

Commissioner Perry asked if the asphalt facility has been at this location for less than a year.

Mr. Osterhout responded that July 9, 2016 was the date TWA began operating this particular plant at this location.

Commissioner Perry asked if there were no other plants there before that.

Mr. Osterhout responded that he was not aware of any.

Commissioner Perry commented that it was a little over a year.

Mr. Osterhout stated that the previous permits he was aware of were for crushing and screening aggregate-type operations in that pit.

Commissioner Perry asked if the applicant sent in an application for a Class II air quality permit in a timely fashion.

Ms. Kremer responded that she had been the major source class permitting supervisor, so this permit was not under her review at that time because it’s a class II minor source permit. She stated she could not answer that question.

Commissioner Perry stated that obviously NDEP had an application because a permit was issued.

Ms. Kremer responded that NDEP received an application, processed it, and issued a permit.

Commissioner Richardson asked Mr. Osterhout what his response was to TWA's position that, since this is a seasonal operation, they did not have the ability to test for the 3.5 months. He asked if his position was that they had the ability to test in November, and wondered if that was why the multiplier is fair and reasonable.

Mr. Osterhout replied that he believed TWA did have the ability to test. They operated at or above the tonnage they used to gather a full test on April 25. NDEP had multiple conversations where Mr. Matthews stated he did not have the tonnage to do a full test. NDEP responded that TWA could do multiple tests. He said they are required to do three 2-hour runs of a test in order to gather a full, complete test. He stated that BAPC explained to him that he could do those runs over three days, even if it was not economical for him. It would cost him more money to have the testing company there; however, in looking back at his records, he operated tonnage at or above the tonnage that he ran on April 25 in order to get the three runs and get a full test.

Commissioner Perry asked if the applicant ever requested an extension due to the period when the entity was not actually processing. He asked if they ever requested an extension for the period because they were not able to get a testing company in or if they were not running any material.

Mr. Osterhout replied that TWA did not make a formal extension request; however, he said that in BAPC's discussions with him, Mr. Matthews stated he did not have the tonnage to do testing and they would be shutting down for the season. In an effort to be fair and reasonable, BAPC stated that as soon as he began operating again - next season - BAPC wanted him to test this facility. That drug out though, as Mr. Matthews stated, and TWA operated in December for one day. Mr. Osterhout said that his understanding was that Mr. Matthews operated through mid-November.

Chairman Gans opened public comment on the penalty, not the violation.

Comment: Ed Wawrytko, the owner of Ed's Custom Sheds, thought that the penalty should be increased.

Comment: Emmett Bishop, a resident of Mound House, commented that if the business was out of compliance, fines should be paid. He added that the permit should be pulled if the business continues to violate compliance.

Comment: Dave Lockhart stated that he hoped the fines would result in compliance and keeping the air clean.

Comment: Melanie Harris, a resident of a subdivision in the area, asked, "Why does the community have to suffer when he has time to test? How many penalties and fines does he need until he has to go?"

Comment: Rosa Irigoyen, a resident of Mound House, stated, "He gets a penalty, but what about us?" Chairman Gans explained that the State Environmental Commission (SEC) operates with a set of rules and regulations on the environment. The SEC does not have unilateral power to act on the comments. He said there are other closely or significantly related areas to assist: the county, city, and zoning departments.

Dawn Buoncristiani, Counsel from the Office of the Attorney General, explained that Chairman Gans needed to stay on point with the agenda and the penalty to stay in compliance with open meeting laws.

Comment: Karen Hardy commented that the amount of the fine was approximately \$150.00 per month, and it appeared to be easier for him to pay the fine than to correct the problem.

Comment: Lorana Brown, a resident of Mound House, commented on the health problems she had to suffer. She stated that he should have more penalties.

Motion: Commissioner King moved to approve the recommended penalty of \$2,520.00 for Air Quality Violation No. 2619. Commissioner Porta seconded the motion. It passed unanimously.

4b) Tahoe Western Asphalt, LLC, Notice of Alleged Violations No. 2620: (For Possible Action) Alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit, in violation of Class II Air Quality Operating Permit AP1611-3748.

Recommendation: Approve NDEP-recommended penalty amount of \$6,600.00 for NOAV No. 2620, issued to Tahoe Western Asphalt, LLC, or take other action as appropriate. ([Attachment 2](#)).

Ms. Kremer stated that the second recommendation was to approve the proposed penalty of \$6,600.00 for TWA for failure to conduct Initial Opacity Compliance Demonstrations (IOCDs) as specified in NOAV No. 2620.

Ms. Kremer explained that the Class II Air Quality Operating Permit requires IOCDs measured by a certified test reader using EPA Test Method 9 on System 01 - Asphalt Plant: Initial System Loading & Conveyance (Emission Units PF1.001 - PF1.005), System 02 - Asphalt Plant: Drum Dryer Mixer/Burner (Emission Unit S2.001), System 02a - Asphalt Plant: Drum Dryer Mixer/Burner (Alternate Operating Scenario), System 03 - Asphalt Plant: Drum Dryer Discharge & Conveyance (Emission Units PF1.006 - PF1.008), System 04 - Lime Silo (Emission Units S2.002 & PF1.009), and System 05 - Reclaimed Asphalt Pavement (RAP) System (Alternative Operating Scenario for System 01) (Emission Units PF1.010 - PF1.012) within 60 days after achieving the maximum production rate, but no later than 180 days after initial startup. As stated previously, TWA provided notification to the BAPC that the plant began operation on July 9, 2016. As such, the IOCDs should have occurred no later than January 5, 2017.

Ms. Kremer then discussed the timeline related to this enforcement action. On July 9, 2016, TWA began operations. January 5, 2017 would have been 180 days from initial startup or the deadline to conduct the IOCDs. On April 25, 2017, TWA conducted initial performance testing with opacity readings meeting IOCD requirements for System 02. On June 13, 2017, BACP issued Draft NOAV No. 2620. On July 11, 2017, an enforcement conference was held. On July 13 and 17, 2017, TWA conducted IOCDs for Systems 01, 02, and 03. On July 19, 2017, BAPC issued Final NOAV No. 2620.

Mr. Osterhout explained how the penalty was calculated using the penalty matrix found in ([Attachment 2](#)).

Commissioner Perry asked what NDEP's logic was in the number of months, the 3.5 and 6.

Mr. Osterhout responded that the 3.5 months falls with system 2, which is the same system discussed in the previous violation. When TWA did its initial performance testing, they were required to do a visible emissions observation concurrent with that test. As such, that met the requirements of an initial opacity compliance demonstration. He said that the logic is that BAPC got 3.5 months from January 5 to April 25 and that the rest of the systems had not had an IOCD conducted at the time BAPC held our enforcement conference with Mr. Matthews. BAPC made him aware they needed to be done. He had his consultant conduct those on July 13 and 17. The enforcement conference was held on July 11. He stated that the multiplier is from January to July, approximately 6 months.

Commissioner King stated that this is a similar situation as in the previous penalty. He indicated he did not like to deal in hypotheticals, but asked what NDEP would have done if Mr. Matthews came

in before January 5 and asked for a formal extension of time to conduct the test because he was going to be on vacation for five months.

Mr. Osterhout responded that NDEP would have reviewed the regulations, determined the health impacts based on any known information, reviewed his operation records to see how much he had operated and then, if it was deemed warranted, NDEP could have written a finding and order. It could have been attached to the permit and with the ability to contest, but it could have stipulations allowing to test within so many days of beginning operation. This process could have allowed an extension of that time frame, which NDEP does not take lightly.

Commissioner King asked if the public's concerns about odors might have played a role in NDEP's consideration of a request for an extension of time, had one been requested.

Mr. Osterhout replied it absolutely would. He then addressed a previous statement made regarding NDEP receiving multiple complaints while TWA was not operating. Mr. Osterhout referred to a chart containing information about when complaints were received. He indicated that TWA stopped operating in mid-November of last year, and that the last complaint was November 15 of 2016. Mr. Matthews began operating around April 11, 2017. The next odor complaint was received on April 21, 2017. He said there was a gap when no complaints were received.

Chairman Gans opened the floor to TWA.

Mr. Brust stated his client did seek an informal extension. He indicated that Mr. Osterhout said earlier that he told Mr. Matthews "no problem." This was back in November. Mr. Brust claimed Mr. Osterhout stated, "When you guys start up again, do the testing then." Mr. Brust said that when they started up again, TWA did a majority of the testing except for a couple of the tests that were not done until June. He asked the Commission to take that into consideration when addressing the number of months used to multiply the three \$200.00 fines. He asked the Commission to take into consideration that the other \$200.00 fine included the 3.5 months that the plant was closed. He indicated Mr. Matthews was told he could do the testing in April when operations started up.

Mr. Brust then addressed comments about wanting to get the right equipment on-site. He stated that the plant was purchased from a different state where it had operated in compliance. He stated Mr. Matthews wanted a plant that operated in compliance before bringing it to Nevada and felt this one did. He stated that Mr. Matthews has now complied with all of the testing and asked the Commission to consider that too. He said that if compliance is the goal of the penalties, Mr. Matthews has already complied.

Mr. Matthews addressed why it took so long to source test. He stated he hired a company called Big Horn, a local tester who has been in business for years. He said they did not respond until 2 or 3 months later after saying they could test. Big Horn indicated they could not test in the State of Nevada due to a non-compete clause. He then hired Broadbent, out of Las Vegas, to test. He stated he had emails whereby he communicated with NDEP that he was scheduled for a source test and then was told the tester had to reschedule. He indicated he had 91 emails of communication with NDEP that he could produce.

Vice Chairman Porta asked Mr. Matthews if he had operated in Nevada before.

Mr. Matthews responded he had not.

Vice Chairman Porta asked if this was the first time he had operated in Nevada.

Mr. Matthews indicated he lived in Florida for 15 years.

Chairman Gans stated the penalty matrix allows for consistency. He stated that if someone asks EPA, they would say the penalty matrix is moderate or below moderate. He indicated that the penalty matrix was developed to get people's attention and achieve compliance, not harm permittees. He again stated the intent is to get people's attention, not put them out of business or do harm. Chairman Gans stated he believes EPA would like to see the penalties much higher and concluded by saying the intent is to achieve compliance, not penalize.

Comment: Ed Wawrytko, commented on how the penalty is very modest, low, and ridiculous. The community is losing more than a penalty. He continued discussing the health of the community.

Comment: Robert Lucas resides in Mound House. He stated that it is cheaper to pay the fine than to fix the problem.

Comment: Patricia Tucker resides in Mound House. She stated that the penalties were not high enough.

Mr. Osterhout stated that Mr. Matthews' attorney stated TWA is now in compliance and asked for consideration to be given to that fact. He stated that opacity testing certification can be obtained by anyone who wants to be certified. It's approximately \$250 to take a one day smoke school class, and Mr. Matthews could have obtained that certification if he chose to. He said this violation is not associated with the performance testing discussed in the previous violation. He said that a third party must be hired for that. He said that what is being discussed is a visible opacity reading that any person can get certified to do. TWA obtained compliance in July, but there were four previous opacity violations, one on May 3 at 37% opacity with a limit of 20%, and three more were being brought forward from April 2017.

Chairman Gans asked what the problem was with the opacity.

Mr. Osterhout replied that NDEP has worked diligently with Mr. Matthews to get maintenance on the baghouse that will control the emissions. They have had many meetings and correspondence to get opacity compliance through maintenance and proper operation of the controls.

Chairman Gans asked if the penalties address the baghouse.

Mr. Osterhout responded they do. He said the opacity violations address the baghouse and that the "failure to test" addressed the baghouse, but the IOCDs do not. He said it is only a visible emissions observation for all of the systems.

Vice Chairman Porta stated he had experience with asphalt batch plants, and while the baghouse may have had issues, the dryer drums have issues. The plants are subject to many operating parameters. They cause smoke when they heat the aggregate too hot and it contacts the asphalt, which causes fumes which may be the source of the visible emissions. He stated that the people present are experiencing unpleasant odors and asked if the plant is now in compliance and is meeting all permitted requirements.

Mr. Osterhout responded they have passed the source test are in compliance with that. He said they have demonstrated initial opacity compliance. He stated that they continue to receive complaints and continue to investigate the complaints. NDEP has observed opacity out of the stack; however, they have not been able to see opacity over a six minute, method 9 requirement demonstrating opacity over the 20 percent limit.

Vice Chairman Porta stated that they were out of compliance and now back in compliance. He asked if all of the repairs were made to the baghouse or if other repairs to the operating system were also made.

Ms. Kremer replied that during the enforcement conference with Mr. Matthews, he reported that his system was running 40 degrees Fahrenheit too hot and exploding through the baghouse. She stated that Mr. Matthews indicated that it would not happen again and that he knew it is not good for his system to run over 320 degrees Fahrenheit.

Mr. Osterhout stated that NDEP has not been able to get a 6 minute opacity observation, which is required by EPA for a valid opacity observation. NDEP has initiated opacity observations, but the plant runs for 3 to 5 minutes only and then would shut down, load trucks, and begin another 3 to 5 minute run. He stated that this has happened multiple times.

Commissioner Perry asked what the modified recommendation was.

Mr. Osterhout replied that the modified recommendation was \$5,160.00 and the original recommendation was \$6,600.00. \$200 was removed from the base penalty for the system that has not operated and it multiplied through the additional 20% noncompliance multipliers.

Motion: Commissioner Perry moved to approve the recommended penalty of \$5,160.00 for Air Quality Violation No. 2620. Commissioner King seconded the motion. It passed unanimously.

4c) Tahoe Western Asphalt, LLC, Notice of Alleged Violations No. 2621: (For Possible Action)

Alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit, in violation of Class II Air Quality Operating Permit AP1611-3748.

Recommendation: Approve NDEP-recommended penalty amount of \$6,450.00 for NOAV No. 2621, issued to Tahoe Western Asphalt, LLC, or take other action as appropriate ([Attachment 3](#)).

Ms. Kremer introduced the penalty. She stated the recommendation was to approve the proposed penalty of \$6,450.00 for TWA for failure to comply with a visible emissions observation for opacity, as specified in NOAV No. 2621.

Ms. Kremer indicated that NAC 445B.22017, as well as TWA's Operating Permit, prohibit the discharge into the atmosphere from any emission unit an opacity greater than 20%. Opacity is measured per EPA Test Method 9 and requires a certified test reader.

She went through the timeline related to the enforcement action:

- [4/25/2017](#) - The BAPC conducted a Method 9 Visible Emissions Observation.
- [6/14/2017](#) - The BAPC issued Draft NOAV No. 2621.
- [7/11/2017](#) - An enforcement conference was held.
- [7/19/2017](#) - The BAPC issued Final NOAV No. 2621.

The average opacity during the Method 9 Visible Emission Observation was 22.5 percent.

Mr. Osterhout explained how the penalty was calculated using the penalty matrix found in ([Attachment 3](#)).

Commissioner King stated that NOAVs 21, 22, and 23 appeared to be for the same violation.

Mr. Osterhout stated that was true. He said the violations were all for visible emissions or opacity violations. He stated that he and his staff are certified every six months to read opacity. He stated that they drive by TWA during their normal course of business on a regular basis, as Highway 50 is their main corridor. NDEP does not regulate Washoe County. He stated that if NDEP observes opacity, they will stop and take a reading.

Commissioner King stated there are three violations on April 25, 27, and 28. He stated that if he puts himself in Mr. Matthews' shoes he might wonder why NDEP was out there so frequently. Maybe there had not been enough time to remedy the problem after the violation was noted. Commissioner King stated he did not understand the frequency of the visits. Is TWA expected to shut down operations and fix the problem before turning it back on? He asked for clarification regarding the frequency.

Mr. Osterhout replied that NDEP was having daily conversations with Mr. Matthews during that timeframe. He stated that they had telephone calls with him and stopped at the site. When NDEP identifies a violation with TWA, they communicate that to Mr. Matthews to the best of their ability. He stated he spoke with him and said, "Please shut this down. You are affecting the neighbors. Please fix the problem. Please take care of the baghouse before you continue to operate. If you do choose to operate and NDEP observes opacity, we have an obligation to stop and take a visible emission observation and issue a violation accordingly if it's identified to be over the 20% opacity limit."

Chairman Gans asked if that process could happen in multiple consecutive days.

Mr. Osterhout stated it could and they would be daily violations. He stated they could give multiple violations in a single day if they took multiple readings. He stated that in this case, to be fair and objective, they would take the reading. If it failed, they would speak to Mr. Matthews and give him the opportunity to fix the problem. If it happened again, they would stop and talk to him again. He stated this happened three times during the week.

Chairman Gans asked if it could happen five times in five days.

Mr. Osterhout confirmed it could. He stated NDEP wanted to achieve compliance and spoke to Mr. Matthews. He stated he spoke to Mr. Matthews personally and asked him to fix the problem, but if he chose to continue operating, NDEP would issue violations accordingly if future opacity was observed. NDEP did observe opacity three times during that week.

Chairman Gans asked if, from an operational perspective, is it more effective for TWA to continue to operate than to shut down and fix the problem?

Mr. Osterhout replied that he did not own the business or make that choice. He stated that if he did own a business, and referred to other facilities that he had worked with in the past that had made the choice to shut down and fix the problem before starting up, which he stated is not abnormal. He stated that he appreciates the facilities that choose to do that, as compliance is the main goal. He stated that clean air for everyone is why he goes to work each day.

Chairman Gans stated that there are realities in operating a business, paying fines, and clean air.

Vice Chairman Porta asked if the statutory maximum for a daily fine is \$10,000 for air quality violations or if that had changed.

Ms. Kremer replied that the statute has not changed but NDEP followed the penalty matrix in its calculations.

Vice Chairman Porta stated he wanted to see where this is in relation to the maximum. He stated that they are approximately 64 percent of the maximum for the first visible emission that was documented.

Mr. Osterhout agreed and stated that the base penalty is \$1,000 and the noncompliance history and opacity multiplier greatly increased the gravity of the fines. He said the next one is larger and will be discussed later. He stated that they are following the penalty matrix to the best of their ability to be fair and objective and bringing that to the Commission to make the decisions.

Chairman Gans asked what Mr. Osterhout would do in absence of the penalty matrix.

Mr. Osterhout stated the deterrence using steep multipliers of 300 percent for doing the same thing over and over was a benefit. He stated that without the penalty matrix he would do the same thing. If he failed to obtain compliance through enforcement he would try harder with greater fines to achieve compliance, which is the goal. Clean air is NDEP's goal.

Vice Chairman Porta asked if TWA is subject to federal regulations under NSPS.

Ms. Kremer responded that two systems are subject to a federal subpart. Systems 02 and 03 are applicable to New Source Performance Standards subpart I, titled "Standards of Performance for Hot Mix Asphalt Plants." She stated it is found in the CFR. She stated that subpart is listed in the permit and includes the opacity limit of 20% or less.

Vice Chairman Porta asked NDEP to verify that TWA was subject to both federal and State regulations.

Ms. Kremer verified it was.

Chairman Gans asked Vice Chairman Porta when the federal regulations apply.

Vice Chairman Porta stated that the federal regulations have been delegated to the State, which must enforce those rules. If the State fails to do that, they are subject to oversight action by EPA.

Mr. Osterhout stated that EPA trusts NDEP but NDEP does not want EPA to come to Nevada to regulate because it will increase violations and make it more costly for Nevada businesses to do business. He stated that he would like to keep oversight at the State level. Mr. Osterhout addressed the maximum penalty statute. He indicated it is \$10,000 per violation per day. The visible emission observations are 6 minute snapshots that can be taken multiple times per day. NDEP chooses to be fair and objective by talking to the operator when they fail the test to give them the opportunity to obtain compliance. NDEP did one test and talked to TWA. NDEP did the test again later that week, and again, noticed the visible emission and took action accordingly.

Chairman Gans addressed Mr. Brust and Mr. Matthews and stated that he hoped they understood the SEC was trying to be as fair and equitable as possible. He stated the SEC does not want to drive TWA out of business. He stated the SEC would like things to get to an even keel and indicated it may not understand everything it should. He stated that this violation is the first of three that are the same and would like to hear from them on this issue.

Mr. Brust stated he had the same concern as Commissioner King with respect to the frequency of the violations. He stated he asked Mr. Matthews if he was notified after the first violation and his response was "no." He stated that during this meeting's break he texted the rest of his company to determine if they had been contacted and the response was "no." Mr. Brust stated he wanted to do some discovery on that issue because TWA was never notified of the violation. He made an analogy of driving through Washoe County at 72 mph and increase to 77 mph then decrease to 76

mph, which are all above the speed limit. The police officer pulls you over and cites you for three different violations. He stated that is not the way it's done. He stated that what is fair if trying to achieve compliance is to notify the company and give it a chance to correct it. He stated that TWA has been taking corrective actions. He reminded the Commission that Mr. Matthews realized there was a temperature issue when they were adding.

Mr. Matthews interjected that they were doing the initial source test after they were notified they had failed. He stated Broadbent informed him that they had noticed spent fuel in the baghouse. Broadbent forwarded the information and he stated he called the jet propulsion company and a boiler company to determine why that would happen. The response was because the plant was running too hot. He stated he noticed immediately that as the plant was cooled down it ran cleaner. It was an easy problem to fix. They were able to fix it the next day. He stated that is why the first test failed. The rock was so hot that when the oil made contact it exploded and turned into particulate.

Mr. Brust asked the Commission to determine if there actually was communication the three times NDEP drove by TWA and thought they were out of compliance because they don't believe there was. He indicated that once Mr. Matthews found out, he immediately rectified it. He stated that he appreciated the SEC wanted to be fair. He indicated there was a conflict; however, as realized in the statement by Mr. Furiko who stated he had stood on the top of the hill with Mr. Osterhout who stated, "I've got to get him on his piece of equipment first." Mr. Brust opined that the statement did not sound like someone who just wanted to bring someone into compliance. He stated that when there are three days of drive-bys and a violation for each, it raises some concerns. He stated if the consistent goal is compliance, then it would be fair for Mr. Matthews to present his evidence showing that he was not notified after the first violation...especially in light that after he was notified Mr. Matthews immediately went out and rectified it.

Mr. Brust made a final point on this violation with respect to the percent opacity, which was 22.5 percent. He indicated he believed there was a mistake in the report stating it was a 12.5 percent deviation. He indicated he thought it was supposed to be over the 20 percent. He summarized he believed they were keeping it between the 20 and 30. He then referred to the meeting his partner recently had with NDEP, where they were told there was a plus or minus 5 percent margin of error in these tests. What that means is NDEP cannot conclusively prove when the plus or minus 5 percent is taken into consideration that the first test was an actual "fail." He stated his client has already admitted to the failed test but there is a probability that he did not fail. He stated that he did not think the NOAVs could have been produced with the entailed specificity and provided to his client on the same day the violations happened. He indicated his client did not receive the NOAVs until weeks later, which was when Mr. Matthews went out to immediately fix the problem.

Mr. Matthews stated that it irritated him that the SEC directly asked Mr. Osterhout if TWA was in compliance and the answer should have been "Yes. TWA is in compliance." He stated that instead, Mr. Osterhout beat around the bush and said "Well you know, they've passed some tests and now that they've got a clean stack test..." He stated the answer should have been "Yes they are in compliance." He stated they are in compliance right now and that should have been the answer. He stated that that is the only answer.

Commissioner Perry stated he had operated multiple crushing plants over time. He stated he noticed Mr. Matthews indicated he did not know he was out of compliance until NDEP notified him. He stated during his time permitting and operating plants he knows that it is the permittee who is responsible to ensure he/she is in compliance, not NDEP. He stated he understands he is a small operator with a portable plant, which can be tough. He stated that if Mr. Matthews does not have a certified reader to determine opacity, it is tough to stay in compliance. He then asked if TWA has a certified environmental person on staff who can determine compliance.

Mr. Matthews responded that Ms. Gay McCleary, who used to work for NDEP, is his environmental person who comes in two to three times per month. She helped to permit the plant.

Commissioner Perry asked if Mr. Matthews believed two to three times per month is enough.

Mr. Matthews responded that NDEP wants one day per month turned in and TWA does it more than that. He stated that they are all signed up for smoke school. He could not do it last October because he went back to Florida, but three TWA people should be certified this winter.

Commissioner Perry stated it sounded like they were going in the right direction. He stated that there has to be somebody who knows and understands the operating equipment and when the conditions are correct. He stated it is a daily effort to keep a plant like TWA's in compliance and that it is incumbent upon Mr. Matthews to make sure it is in compliance every day.

Mr. Matthews responded, "Absolutely."

Mr. Osterhout stated that there is an error built into the test. He explained that this is why a six minute reading of 24 observations is required. The test requires a person to look at the stack and take a reading, look down, and 15 seconds later take another reading. The snapshot reading is determined to be an average of the 15 second's opacity. The guidance is developed to ensure a single reading is not used to determine compliance.

Mr. Osterhout stated that with respect to the actual readings in this violation, the lowest reading was 15 percent and the highest was 35 percent. He stated that there is a possibility for error; however, NDEP observed opacity when they drove by and are certified and signed off on the reading. NDEP feels there was a violation and moved forward on it.

Ms. KC stated that Mr. Matthews had indicated he was not notified by NDEP after the first violation on April 25. If he was notified, how was it done?

Mr. Osterhout stated that on April 25, the source testing was conducted, which he stated was included in the SEC binder. He continued that because of the issues and complaints NDEP had been receiving, Mr. Osterhout had his staff on-site the entire day to observe the testing and ensure it went properly and that valid results were obtained and accurately represented what was going on at the plant. He stated that he was personally on-site. He stopped in with additional staff for observations. They stayed for a couple additional hours through the rest of the runs and notified Mr. Matthews of that. He stated that with respect to the other violations, he did not have the email on hand but was confident he personally spoke to Mr. Matthews on the telephone as well as sent emails for multiples violations. With respect to these cases, he could not speak to because he did not have the emails in front of him. He stated he was confident they had notified Mr. Matthews because NDEP had continuous communication with him when he was in noncompliance because they wanted him to get back into compliance.

Chairman Gans asked if NDEP communicated with TWA immediately after each of the three violations.

Mr. Osterhout replied he was confident that was the case. The first day NDEP was on site and notified him. He stated the stack test company notified him also. The next time NDEP observed a violation he was confident NDEP communicated with him, but he did not have written correspondence in front of him. He stated he knew at least telephone calls were made because he had spoken to Mr. Matthews personally on a number of occasions asking him to address the issues and return to compliance. He stated that Mr. Matthews chose to continue to operate because he had customers who needed asphalt.

Commissioner King asked if it was normal protocol for NDEP to “immediately” notify someone who they observe exceeding opacity so they can correct it.

Mr. Osterhout responded that it was. He stated his staff will inform him. They travel the entire state. He indicated he has six staff who must cover 95,000 square miles and they are on the road a lot. There have been multiple instances where they observe crushing plants in the middle of Nevada. They notice opacity and stop at the plant to discuss the opacity right then and there. The staff then notify him via telephone or email. He requests that they stop in to discuss the problem. Mr. Osterhout stated that he did not want to be the type of regulator to observe the problem and just send a notice in the mail. Instead he would rather talk about it. He stated that NDEP does that to the best of its ability with the resources it has.

Commissioner King asked if there would then be no reason to deviate from that standard protocol with TWA’s opacity incidents.

Mr. Osterhout replied “not in this case.” He stated it has taxed NDEP’s resources to get the volume of complaints they are receiving every day and must respond to. He stated that TWA is not the only facility they receive complaints about and must address. He indicated that NDEP is doing its best to balance it. He indicated that he would like the complaints to stop, in part, so he and his staff could do their jobs. He stated that receiving complaints every day takes away from the other important things they must do such as reviewing test results, reporting to EPA, and other important things that must get done.

Vice Chairman Porta asked that although it is NDEP’s protocol to notify an entity who is in violation, is there a regulation that requires that?

Mr. Osterhout replied that there is no regulation to notify when they will be onsite to take a reading or that they are in noncompliance. He stated that technically, NDEP could determine the violation and the first notice they would get of it would be in the form of a draft NOAV in the mail. He indicated that NDEP wanted to avoid that and his policy and views are not to be that type of agency.

Chairman Gans recognized the point that Vice Chairman Porta made with respect to the fact that NDEP does not have to immediately notify a facility that is observed to be in noncompliance.

Mr. Osterhout responded that there is nothing in the regulations that require NDEP to notify a facility in violation at that time. The requirement is that “if there is a violation they shall issue a NOAV and produce notice at that time.”

Chairman Gans asked if there is a notification timeframe that a facility in violation must be noticed.

Mr. Osterhout replied there is EPA guidance but he could not cite them from memory. He stated NDEP tries to meet requirements and get violations out as quickly as possible. He stated that with the small crew that must address the entire state, minus Clark and Washoe counties, NDEP is working hard to keep up with all of the requirements and do things in a timely manner. He stated NDEP must prioritize its work, and with all of the daily complaints they receive about TWA, TWA has become a priority.

Chairman Gans asked if it was not important when NDEP needs to tell the facility there has been a violation because NDEP does it immediately.

Mr. Osterhout responded that to the best of their ability they try to at least notify them verbally that there is a violation. He stated an area for growth might be to create a written record when they notify a facility that is in violation.

Chairman Gans invited comments from the public.

Comment: Ed Wawrytk commented that he can see the air and is concerned. He also stated that he breathes the air and does not want Mr. Matthews to be in charge of his health. He asked the Commission, "Do you want him in charge of your health?" No comments were made on the penalty.

Comment: Emmitt Bishop asked if we could penalize the maximum amount so the plant will not continue to work in this manner.

Comment: Clay Brust representing TWA, asked the Commission to look at the phone records or the email records to see if his client was notified.

Comment: Judy Lucas said she would like to see the fines higher.

Prior to voting, Commissioner King stated that the comments received from the public indicate there are still odor and opacity issues. He asked NDEP if it was still getting complaints from the citizens in the area on this issue.

Mr. Osterhout replied the last complaints were received on September 11 and were odor complaints.

Commissioner King asked if NDEP responds by sending someone out to investigate the opacity/odors.

Mr. Osterhout replied that the facility is approximately 15 minutes from the NDEP office. He stated that Mr. Wimer, a member of his staff, drops everything and goes out there every time. He stated he tells him he knows they must go out there and do what they can about the issues within the confines of the law. He stated they respond to the best of their ability every time. He stated he personally has gone to the site at 6:30 am because his staff was not available due to inspections they were conducting. He stated that whoever is available will respond. He stated he has taken permit writers with him because his staff was not in the office.

Commissioner King asked what was found when NDEP responded to the complaints on September 11.

Mr. Osterhout responded that he believed that was a day when his staff observed opacity but was not able to get a full 6 minute test or the average was less than the 20 percent limit. He stated that was his recollection, but he could consult with his staff on a break to get the answer.

Chairman Gans stated he wanted to stay focused on the penalty.

Ms. Kremer stated that during the enforcement conference on July 11, Mr. Matthews did not dispute the three independent violations. She stated it is a public health concern and opacity is an indication of particulate matter. She reminded the SEC that she had talked about the health concerns associated with particulate matter.

Motion: Commissioner Porta moved to approve the recommended penalty of \$6,450.00 NOAV No. 2621. Commissioner KC seconded the motion. It passed unanimously.

Chairman Gans requested that the following two violations be presented together, but separately, because they were both for the same type of violation.

4d) Tahoe Western Asphalt, LLC, Notice of Alleged Violations No. 2622: (For Possible Action)

Alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit, in violation of Class II Air Quality Operating Permit AP1611-3748.

Recommendation: Approve NDEP-recommended penalty amount of \$10,875.00 for NOAV No. 2622, issued to Tahoe Western Asphalt, LLC, or take other action as appropriate ([Attachment 4](#)).

Ms. Kremer presented the proposed penalty to the Commission ([Attachment X](#)). The fourth recommendation was to approve the proposed penalty of \$10,875.00 for NOAV No. 2622, issued to Tahoe Western Asphalt. NAC 445B.22017, as well as TWA's Operating Permit, prohibit the discharge into the atmosphere from any emission unit an opacity greater than 20 percent. Opacity is measured per EPA Test Method 9 and requires a certified test reader.

She went through the timeline related to the enforcement action:

- [4/27/2017](#) - BAPC conducted a Method 9 Visible Emissions Observation.
- [6/15/2017](#) - BAPC issued Draft NOAV No. 2622.
- [7/11/2017](#) - An enforcement conference was held.
- [7/19/2017](#) - BAPC issued Final NOAV No. 2622.

The average opacity during the Method 9 Visible Emission Observation was 32.1 percent.

Mr. Osterhout explained how the penalty was calculated using the penalty matrix found in ([Attachment 4](#)).

4e) NOAV No. 2623 (For Possible Action)

Alleged failure to construct or operate a stationary source in accordance with any condition of an operating permit, in violation of Class II Air Quality Operating Permit AP1611-3748.

Recommendation: Approve NDEP-recommended penalty amount of \$6,600.00 for NOAV No. 2623, issued to Tahoe Western Asphalt, LLC, or take other action as appropriate ([Attachment 5](#)).

Ms. Kremer presented the proposed penalty to the Commission ([Attachment X](#)). The fifth and final recommendation was to approve the proposed penalty of \$6,600.00 for TWA for failure to comply with a Visible Emissions Observation for Opacity, as specified in NOAV No. 2623. NAC 445B.22017, as well as TWA's Operating Permit, prohibit the discharge into the atmosphere from any emission unit an opacity greater than 20 percent. Opacity is measured per EPA Test Method 9 and requires a certified test reader.

Ms. Kremer walked the Commission through the timeline related to the enforcement action.

- [4/28/2017](#) - The BAPC conducted a Method 9 Visible Emissions Observation.
- [6/19/2017](#) - The BAPC issued Draft NOAV No. 2623.
- [7/11/2017](#) - An enforcement conference was held.
- [7/19/2017](#) - The BAPC issued Final NOAV No. 2623.

The average opacity during the Method 9 Visible Emission Observation was 28.5 percent.

Mr. Osterhout explained how the penalty was calculated using the penalty matrix found in ([Attachment 5](#)).

Chairman Gans asked for any comments or questions from the Commissioners. There were none.

Chairman Gans invited comments from anyone who wanted to speak on behalf of TWA.

Mr. Brust stated he would like to incorporate his comments on the prior violation, 2621, and add comments to 2622 regarding the admitted margin of error of 5 percent. He stated that this violation is not really a 32.08 percent proven. He indicated that the most it can be proven, within the margin of error, is 27 percent, and that would lower the multiplier on 2622. He stated that he thinks the multiplier that incorporates violation 2621 should not be included on the same basis as discussed earlier due to lack of notification to his client in a timely manner so his client could rectify the problem before 2622. He stated he thought the evidence showed that as soon as he got notification of something he acted on it. The same comments could be made for violation 2623. The 5 percent deviation does not effect this one because it could only go from 28 to 23 and he thought it kept it in the same category according to the department's discussion of the calculation. He asked that the two prior violations not be considered as a multiplier again due to his client not being given timely notification so that he could have acted and prevented the violation.

Commissioner King asked Mr. Brust, regarding the 5 percent deviation, if he felt he was cherry picking that. The 32 percent could be as high as 37 percent or as little as 27 percent. Conversely, the 28.5 could have been as high as 33.5 percent, which would have put this penalty in the next higher tier. He stated that Mr. Brust discussed using it to reduce the penalty by 5 percent, but that it also works the other way.

Mr. Brust responded that it is because it is the standard that is used when a governmental entity is going after a private citizen or a private business. The governmental entity has a burden of proof. So, when there is a deviation, the governmental entity always takes the lower. He said the same thing goes with the blood alcohol test and any test that has a scientific deviation. The governmental entity has to prove what it can prove and the science says all that can be proven is 32. He said that with the mathematical and scientific standard deviation that is inherent as a flaw in these tests, what the government can prove using these statistics is that it was 27. He said if it found 32, that is something that is very inherent in the system and is why he was deviating down.

Vice Chairman Porta stated he thought that if Mr. Brust was arguing about the method in the violation, he should have filed an appeal after receiving the NOAV to say that the method was somehow flawed or misrepresented. Since Mr. Matthews apparently went to the enforcement conference with NDEP and agreed with, or did not dispute, the notices of violation, Vice Chairman Porta did not think there should be an argument regarding whether it is 28 or 23 percent. The violation occurred and was not appealed. He stated he thought it should stand and that NDEP's recommendations are in alignment with the matrix the SEC adopted. He finished by stating that was his comment.

Mr. Brust. Responded that he was not contesting that the number found by the Commission was 32 percent. But, he said it becomes important during the penalty phase as to whether that number is really what can be proven. Even if it was at the liability phase it would still be 32 percent, but when it comes to the penalty phase, that number matters. He said it is not just anything over 20; it is that if it goes over 30, it is even more. He stated he was bringing it up now because the 5 percent deviation now makes a difference.

Chairman Gans stated he understood Mr. Brust's rationale and logic. He asked what Mr. Brust thought about the maximum penalty of \$10,000 per day?

Mr. Brust stated his understanding is that that is a penalty that is under the Federal guidelines, and he would need a chance to look at that. He indicated that it was the first time he heard that. He stated they have not had a problem with the efforts to apply the matrix. He believes that a couple of the enhancers being used should not be used. He stated he would need some notice and that the Commission is now thinking, "You guys came in and contested it. We could give you a \$10,000 fine... which is kind of the message don't come in here and contest it to us, sir." He stated he would just respectfully request notice if that was going to be a factor. He indicated he did not think it is because NDEP detailed how they come up with the fines. He stated NDEP never started out with \$10,000 as a fine. He stated that was something that was brought up in answer to what the maximum federal fine could be. He concluded that because this is a State Environmental Protection proceeding, we must stay within the guidelines they are using.

Chairman Gans stated that he was not trying to spar with Mr. Brust and he seemed knowledgeable in this area. He stated that he knew there was consideration that the \$10,000 is way too low and it has been in effect for years, and said we should look at something more than \$10,000. He said that we looked at the penalty matrix because we thought it was fair. He said we were trying to be consistent and not trying to run somebody out of business. Chairman Gans asked Mr. Brust if \$10,000 was a maximum to protect his client. He asked what Mr. Brust would say if it was \$25,000 a day. Chairman Gans stated that what he was trying to communicate was that this issue looked like it could escalate and he wondered where, in Mr. Brust's opinion, this entire situation was heading.

Mr. Brust responded that he thought the entire situation was heading in the direction that his client has complied. He indicated he knew that neighbors have come in and commented about this and have said they smell something or that they see black smoke, but the science is that his client is in compliance. He stated that if there is a problem with the test or a problem with the law, that would be something for the legislature to address.

Chairman Gans added, "Or EPA."

Mr. Brust agreed "Or EPA, or a court or something along those lines." He stated that, as of today, his client's obligation is to operate under the law. He said that is what they are doing. He said that there have been comments that the department cannot get a reading with the suggestion his client is starting and stopping it every 5 minutes. He said that is crazy and does not make sense at all. He said that when that was mentioned, there were comments behind him along the lines of "I hear it going for hours." He concluded that they are not trying to avoid the test. He said they are out there running and have been running since they got these notifications. He said they have been running in compliance with the law and with what EPA requires. He said if there is still a smell or a danger, it is on the EPA if the restrictions need to be changed. He said his client will then comply with those restrictions. He stated that his client is from Carson City and the other investors in his business are from Carson City. Their employees are from Carson City. He claimed they are not trying to ruin this environment. He said they have tried to comply and are now in compliance. He said that is where he sees it going. He said that in the long run, he sees them continuing to be in compliance in the future.

Chairman Gans stated Mr. Brust's points were well taken. He stated that the Commission does not base its determinations on hearsay. He stated that they try to get the best information as possible from staff. There will always be shortcomings, but the Commission tries to get the best factual information to make a determination with. He stated he appreciated Mr. Brust's comments and thanked him.

Mr. Matthews stated, "A real simple and sweet comment. The reason we run 5-6 minutes at a time is the fact when I borrowed some money from a friend to set the company up he told me if somebody calls Christmas Eve and wants 15 tons mixed, you will be in town. Meaning we are taking on the mom and pops who nobody else will mix asphalt for...the 3,5,6,10,12 ton people. We are servicing them whether we are making money or not. We are doing what we said we were going to do for the community when I got the permit for Carson City. We make 3 ton, 4 ton...the waste is more than that, so there is no money in the deal. But, we want everybody. We want a customer service-based business, product, people and service. Eventually it will pan out. That is why we fire and stop. You can check our records. We can shoot you invoices. It's really simple to check. Just like it's very easy to check if he notified me that we have those three violations. You know data doesn't lie."

Chairman Gans stated that he thought Mr. Matthews' attorney brought up a point about how it looks. He stated that was why he said hearsay. He thought it was important that Mr. Matthews addressed why he did not have batches longer than 6 minutes.

Mr. Matthews stated, "We don't have customers for that at times, end of story. We are not going to make it and throw it away. Oil is \$400 a ton. It costs us \$50 a ton to produce asphalt. We have a 10 percent margin on it. Call Carson City, they buy mix from us. They don't have to go into Sparks to buy mix. They are paying \$20 less a ton. They are coming right here. We are helping everybody out...all the little mom and pops that can't get into the big shops."

Chairman Gans stated he was not going to take public comment because they had done so on the first violation and these two are the same. He stated he was trying to get things going because someone needed to leave. He indicated that if there was not any more comments from staff or questions or comments from the Commission, he wanted to finish.

Vice Chairman Porta stated that he would like to put things into perspective with respect to the penalty. He did not feel there was any information other than Mr. Brust's comment that capacity could have been 5 percent less or 5 percent more. He said there was no evidence of that. There is a standard US EPA method which Mr. Osterhout's staff used. He said it is approved and that the Commission has heard these opacity readings in the past. He said the Commission has based penalties on those. He stated the Commission has never deviated or questioned that method. With regard to the maximum amount, the state law is \$10,000 per day per violation. The federal requirement is upwards of \$20,000 plus on the air side. He added that not one of these violations included economic benefit. He pointed out that the "economic benefit" value was zero in every one of these violations. He said that he thinks a greater value could easily have been applied. He stated that EPA would have applied a value for "economic benefit" if the inspections had been conducted by an EPA inspector. He stated that there would have been a matrix similar to this used. EPA has a model that they run based on the company size, their gross revenues, and so forth. There would have been an economic benefit. Vice Chairman Porta said that the SEC set up this matrix. The methods the Division used were fair and he did not see any reason why the Commission should deviate from the process in this particular case.

Chairman Gans asked for additional comments or questions. He then stated they would take both of the violations together and he asked for a motion from Commission on both items.

Motion: Commissioner KC moved to approve the recommended penalty for NOAV 2622 for \$10,875.00 and NOAV No. 2623 for \$6,600.00. Commissioner King seconded the motion. It passed unanimously.

Comment: Commissioner Perry commented that it was painful for him as a former private industry person to assess fines for air quality. He stated he had been on the receiving end of this too, in the mining industry. He stated it was heartfelt when he communicated earlier that Mr. Matthews needed to build the capacity into his organization to make sure when the plant starts up in the morning that it is in compliance for the day. He emphasized that the SEC did not want him to come back with more violations.

Commissioner Perry stated that after operating mines in the past, he knew what it took with air. Air is difficult when using baghouses and starting and stopping on a daily basis. There are little upsets when bringing up a plant that's not uncommon; however, somebody has to take care of them. He continued that in mining operations, there is an environmental person with the ability to stop the plant. That person can stop it, fix it and then start again. He concluded that it was an operating philosophy and offered to help Mr. Matthews by talking more about it offline and encouraged him to build that capacity into his organization.

Break for Lunch: Commissioner Turner left the meeting.

Presentation

5) Air Quality Odor Presentation - (Attachment 6) Lisa Kremer, Chief of the Bureau of Air Pollution Control (BAPC), gave a presentation on NDEP's authority with respect to odors. The presentation addressed federal regulations, state regulations, the history of odor complaints and how they can be addressed. She also provided information specific to asphalt plants.

Ms. Kremer mentioned the federal regulation "Regulatory Options for the Control of Odors" document EPA-450/5-80-003, February 1980. She then addressed state regulation NAC 445B.22087, which states that no person may 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 the comfortable enjoyment of life or property. The director shall investigate an odor when 30 percent or more of a sample of the people exposed to it believe it to be objectionable in usual places of occupancy. The sample must be at least 20 people or 75 percent of those exposed if fewer than 20 people are exposed. The director shall deem the odor to be a violation if he or she is able to make two odor measurements within a period of 1 hour. These measurements must be separated by at least 15 minutes. An odor measurement consists of a detectable odor after the odorous air has been diluted with eight or more volumes of odor-free air.

Ms. Kremer then cited NAC 445B.281 which addresses violations and administrative fines. All minor violations become major violations upon the occurrence of the fourth violation of the same section within a period of 60 consecutive months. She then discussed the history of odor complaints that NDEP received from 2013-2017. She stated a total of 511 complaints were reported; 9 percent of them related to asphalt plants.

Ms. Kremer stated the source of information regarding asphalt plants is the Agency for Toxic Substances and Disease Registry (ATSDR). The document indicates odors from asphalt plants are not generally a health hazard and recommends the installation of closed-system transfer units to reduce stray emissions and employ techniques to reduce particulate matter.

Ms. Kremer concluded that NDEP takes all complaints seriously and each odor complaint is addressed. NDEP also coordinates with city and county officials that are charged with enforcing odor codes. She noted that additional recordkeeping from the public is also helpful.

Commissioner Perry asked how many violations NDEP has issued for odors.

Ms. Kremer responded that to her knowledge NDEP had not issued any violations; however, in 2011 a sample was collected but the results were negative and a violation was not issued.

Commissioner Perry stated that 65 percent of the complaints were due to an oil refinery and asked for more detail.

Mr. Osterhout responded that there is a facility near Fallon that is located approximately a mile from residents that has generated many complaints and continues to get complaints.

Chairman Gans asked if asphalt plants are more plentiful than refinery plants.

Mr. Osterhout responded that there are multiple asphalt plants in the State of Nevada but they are typically located in rural areas where they do not generate complaints. He said the complaints that were listed were generated by one specific asphalt plant.

Chairman Gans asked if the one facility generating the complaints has a problem. He asked if NDEP could provide any insight.

Mr. Osterhout responded that in his experience he was not familiar with complaints from other asphalt facilities. The one specific plant has generated all 7 percent of the complaints that NDEP received and NDEP is actively working at gaining compliance.

Vice Chairman Porta stated that it takes 3 minor violations to be a major. Odors are considered a nuisance and minor violations in the eyes of Nevada code. Usually odors are precursors to other compounds such as VOCs. He asked if NDEP has any interest in looking at something other than odors because they are difficult to identify. He asked if there was a different approach NDEP could take because the community is greatly affected; they would not have shown up here today in masses if they were not. He stated that odors are very subjective but VOCs are definitive and a health effect can be better ascertained.

Ms. Kremer responded that TWA has emission limits in the permit for VOCs and they are meeting those permit limits.

Mr. Osterhout added that the use of controls can eliminate the odor-causing compounds. He stated that NDEP worked with a facility in the Fernley area that installed a thermal oxidizer and the complaints were eliminated. He said they did a fantastic job; however, that may not be economically feasible in this case because the cost was 6 or 7 figures.

Vice Chairman Porta asked if the company with the recent complaints did a source tests for VOCs.

Mr. Osterhout replied they did test for VOCs and NDEP required additional testing specifically for those.

Vice Chairman Porta stated that they must have passed, otherwise additional violations would be on the agenda.

Mr. Osterhout responded they did pass but did not think it was relevant to speak about a failed source test because it is not on the agenda.

Chairman Gans stated he did not think the discussion should be about a specific permittee because the conversation is in general terms. He stated that his concern is associated with what Ms. Kremer

explained regarding emissions and health effects. He said that the Commission heard NDEP has not gotten anywhere with odors. He asked if that meant there was not a problem with odors. He asked Ms. Kremer to give the Commission some insight on emissions verses odors.

Ms. Kremer stated that studies show that odors are not a health hazard. She said they discuss that things like frequency, duration, and other factors that go to a new level can, at some point in the future, become a health hazard. She stated that she cannot evaluate that herself. However, she said there is an emission limit in the permit for regulated compounds.

Chairman Gans asked if there is an impact or a corollary with the permit limits and odors.

Ms. Kremer stated she has not seen a study that shows that there have been facilities in the past with odor issues that have put on additional controls that have helped decrease particulate matter and other items which helped with odors and odor complaints, but she said it does not always correlate that way.

Vice Chairman Porta asked if the only other way to determine if this is an issue is to monitor and asked Ms. Kremer if she agreed.

Ms. Kremer responded that the only way to determine that, based on the regulations, is to take samples, but then the dilution would have to be known. She said an investigation would have to be conducted to determine at what point of the dilution the sample is harmful to a person.

Vice Chairman Porta said he was talking about sampling for VOCs. He stated if people are complaining and the issue may be an air standard, it should be monitored for those contaminants. He stated ambient air quality monitoring could be conducted for a more quantitative evaluation.

Mr. Osterhout responded that NDEP looks for issues associated with emissions, which starts with controls, permit compliance, and through puts. He stated that ambient monitoring has been discussed and may be implemented. He stated it has not been brought to light yet.

Vice Chairman Porta stated he was bringing it to light. He stated plants can be modeled, source tested etc., but it is not known what is really going on unless it is monitored on-site. He emphasized that when a community is complaining and the plant appears to be in compliance, the only way to scientifically know what the problem is would be to put an ambient monitor on-site.

Chairman Gans mentioned that a National Geographic article about odors indicated that the subject of odors is very emotional. Odors affect people differently and he asked where a person affected by odors should go for solutions.

Ms. Kremer responded that NDEP regulations address only what she specified earlier and she does not have the answer to that question. NDEP takes all complaints seriously but can only apply the NDEP regulations. She stated that it would be helpful if the complainants tracked the odors. She stated they can report the odors, even after working hours. She stated NDEP is fulfilling its role.

Mr. Osterhout stated he has reached out to the local governments regarding this issue to determine their authorities.

Chairman Gans shared that when he first worked at a sewer plant there was not an issue with odors until the city grew up to the fence line. Odors became a problem and the facility had to address them with additional controls. Lots of money was spent to control the odors. He concluded by communicating to NDEP that there are other issues that NDEP does not have control over with respect to this problem.

Commissioner Richardson stated that industrial processes that have the potential to emit require a special use permit which must be renewed annually through a public process, and the county commission approves or disapproves it. It provides a venue for the public to show up and comment on the permit.

Commissioner Perry stated that he was on a planning commission for seven years in Elko County and heard similar issues. He stated that zoning is significant. Industrial zoning should not be next door to residential zones. He stated there is a statute that addresses this issue. He stated there is a public body that oversees this called SLUPAC that has a representative from each county and is overseen by State Lands. He recommended that NDEP get on the SLUPAC agenda to bring this issue up. He stated the city or county master plan delineates where development may or may not encroach.

Chairman Gans stated that NDEP doesn't have the resources to control all of this. He stated he appreciates what NDEP can do but recognize they cannot do everything.

Chairman Gans invited comments from the public.

Comment: Melissa Fraker said she would like to bring to light that Mr. Matthews has too many violations, and it continues to happen. She said that when a facility is producing a product that affects the health of the community, enough is enough.

Comment: Patricia Tucker said she has been a resident since 1991. She said her neighbors and herself have come up recently with health ailments. She stated that watching the plant and checking the odors is not enough. She said she believes that it is more than just odors and that more investigation should to be conducted.

Comment: Melanie Harris said that the bottom line is that we are all going to wake up and still have the fumes to smell. If a facility like this were near the Governor's office, this plant would not be operating. She asked if the plant can be shut down temporarily until it is known what chemicals are in the air?

Comment: Lorina Brown said she does not have the ability to smell, but feels the effects in her lungs. The physician costs are overwhelming over the health problems due to the odors in the air. She said she wanted the Commission to know her health is important to her, and she would hope that it would be important to them too.

Comment: Judy Lucas said she does not believe anyone is piloting measures to make sure the facility is running properly. She said her service dog is affected by the odors. She said the facility is running at all hours of the night and wakes the household up. Running the plant causes them to run the air conditioner 24/7. She said this is taking a toll on the finances of the family.

Comment: Zach Humes, an Executive Assistant for Dennis Hof in Mound House, said that he was told that a chemical can be added to assist with the odor, and asked why the plant is not mandated to utilize the chemical to help with the odors and assist with the chemicals in the air.

Comment: Joanne Dette asked if an environmental study was done before the plant went into operations. She asked why didn't anyone from the plant or the environmental agencies notify the community via mail. She said that in the last 1.5 years since the plant moved in she has had more health issues than she has her entire life. She is worried and scared of what she is breathing in wondering if in 20 years she is going to end up with cancer because of the odors.

Comment: Ed Wawrytko said the odors do not really bother him; however he is worried what chemicals he is breathing in.

Comment: Melissa Fraker said she has information on the chemical and on what was going to be put into the chemical, and asked if the Commission wanted a copy.

Comment: Alicia Thompson Hernandez said she is concerned for her sister that lives in the community and the stuff that she is breathing in from the asphalt plant. She states that she moved to the state of Nevada because of the quality of the air, but now it is not very good. Alicia's request is that we check the chemical for the community.

6) Revised Nevada Solid Waste Management Plan- Bureau of Waste Management (For Possible Action) (Attachment 7) Jim Trent and Chet Sergent from the Bureau of Waste Management (BWM) reported that *Nevada Revised Statutes* (NRS) 444.570 requires the State Environmental Commission (SEC), in cooperation with the governing bodies of Nevada's municipalities, to develop a statewide solid waste management plan and to review and revise it every five years.

It was noted that it had been well past the five-year mark since the SEC approved the last plan in December of 2007. In 2012, when the process to review and revise the current plan was initiated, the state solid waste program was struggling financially because its sole revenue source, the tire disposal fee, had declined significantly due to the severe economic recession occurring at the time. The BWM was seeking approval from the Office of the Governor to institute new solid waste permit and landfill fees. Approval was eventually obtained. New solid waste fee regulations were drafted and noticed, reviewed by the regulated community, workshopped and submitted to the SEC for adoption. The existing solid waste programs in two health districts and 15 counties were analyzed. Comments from the various health districts and counties were solicited twice. Mr. Sergent gave a brief review of a summarized statement on the solid waste management plan.

Mr. Sergent asked for questions.

Commissioner Perry made a correction in the presentation that the City of Elko has been running a single stream recycling since 2012. He then asked if this was an update of an existing plan or the first time there's been one.

Mr. Trent responded that this was an update of an existing plan.

Commissioner Perry asked what major differences there were between the old plan and the new plan.

Mr. Trent responded that there was not a major difference.

Commissioner Perry asked if the stakeholder group was counties and those who operate the landfills.

Mr. Trent replied it is.

Commissioner Perry asked if they had substantive comments on the new plan.

Mr. Trent said they did not.

Vice Chairman Porta asked about E-waste. He stated the document says E-waste continues to grow in volume as does the concern. He asked if there has been any progress with regards to recyclers, people who can handle this type of waste. He wanted to know the status.

Mr. Sergent responded that a lot of it is exported. He said that basically all of the E-waste was being exported 10 years ago, but now a small percentage of it is being repurposed and reprocessed here in the country. He said that is very slow and there are no drivers to make it go faster.

Mr. Trent responded that E-waste also crosses over into the hazardous waste. What is generated at the home would not be hazardous waste. He said at the federal level, we are still operating the same way we were five or six years ago in terms of CRTs. If they do not pass a certain test, they are hazardous waste. He said they have not seen anything significant in the last few years other than it continues to grow and it is an issue that will need to be addressed.

Chairman Gans asked if nuclear waste is a solid waste.

Mr. Trent responded it was not. He said that nuclear waste is regulated separately.

Chairman Gans stated that Nevada is lucky to have wide open spaces and that he knows the federal government looks at Nevada for things including nuclear waste, which he stated he is neither for nor against. Discussion of importation concerns him and has declined the last few years, but if we're going to market it, most of the land is federal and it is beyond our control. It is federal land so importation is going to take place no matter what. He asked if we have to go out and market it. He said he was not saying the BWM was marketing it, but he said he had read some things about importation and felt concerned about importation and using Nevada's land.

After further discussion, Chairman Gans stated that he looked at NDEP as the experts and understood NDEP was not concerned with importation.

Mr. Sergent stated there currently are three class one facilities, which is the largest landfill class that has been permitted that is not operating. He said they are all based on importation on a rail line. He said there is one in Humboldt County, one in Churchill County, and one in Lincoln County. The companies came in and were talking several years ago. It took the Jungo landfill four years to get a permit, but ever since then it has sat idle because they do not have the rail set up. He said they do not feel that importation is an urgent concern in the near future.

Commissioner Richardson stated he was curious if the Fulcrum biofuels were on the radar as potentially having an impact on the waste management plan given that numbers upward of 70 percent of the Reno household waste would ultimately be converted into jet fuel. He asked if that would be a factor in this plan.

Mr. Sergent stated he saw that as an advantage going into the future. He said there will be more diversion and keeping waste out of the ground.

Commissioner Richardson asked if we run the risk that the City of Reno could say "We're surpassing the recycle requirements because one entity is performing all this and that will provide them an opportunity to not be up to speed on other aspects of recycling?"

Mr. Sergent responded that he did not see a big change for the county other than where their destination is. He stated he did not see it changing their solid waste program much.

Commissioner Richardson stated that because they are taking their feed stock and sorting it on-site, Reno would not have to implement a recycling program if the fulcrum facility was doing it. He stated he was curious if there is a concern that Reno will not need to do other recycling programs because Fulcrum, as an independent company, is performing that service for them without any investment to the structure of things for the City of Reno.

Mr. Sergent stated he understood what Commissioner Richardson was saying.

Mr. Trent stated their data would be captured in the information gathering. He indicated Fulcrum was outside Washoe County. He said that Washoe County is a separate solid waste management authority, which complicates it a little bit from our standpoint, but their information and data would still be captured, including their diversion rate, so he was not quite sure what the specific question is.

Commissioner Richardson asked if the city would still need to recycle to meet these requirements, regardless of what is happening to their bulk trash that is being sorted outside the county.

Mr. Sergent replied "Yes, I think the county will continue to do that because they just finished the big eco center that they're just starting to operate, waste management that it, and that's their new sorting facility. They have to operate that in order to get their amortization of their funding back, so I think that's going to continue. I don't really see it making a huge change in the county."

Commissioner Perry asked where the single stream recycling materials are going to. He asked if they are being processed downstream for Reno and Clark County.

Mr. Sergent responded that much of their waste is sorted here and then gets bundled and sent to the Bay area.

Commissioner Perry asked if it is sorted here.

Mr. Sergent replied, "Yes, there are several sorting facilities in Clark County, their transfer station, they sort there and bail, on-site. Commercial Row, in Reno, along the river, has been in business for several years and they just expanded what they call an eco-center that has all the new hi-tech conveyors for sorting."

Commissioner Perry asked if that is where it is processed, right on-site.

Mr. Sergent responded "Yes, they just added on to their old transfer station there."

Commissioner Perry stated he was aware that the sanitation company in Elko bundled it up and sent it to Salt Lake City to a processing facility where it got sorted and would like to see how it is done.

Chairman Gans asked for public comment. There was none. He then asked for a motion.

Motion: Commissioner Perry moved to approve the Solid Waste Management Plan, Vice Chairman Porta seconded the motion. It passed unanimously.

Regulatory Petitions

7) Permanent Regulatory Petition - R014-17 Bureau of Air Quality Planning and Air Pollution Control: (For Possible Action) Mr. Dragoni, Bureau Chief for Air Quality Planning, presented the permanent regulatory petition to the Commission. Mr. Dragoni explained the purpose of the petition. This petition would make Nevada eligible to file the beneficiary certification form to become a beneficiary for the Volkswagen settlement. As a beneficiary, Nevada must certify that it will not deny registration to any Subject Vehicle based solely on the fact that it has a defective device.

As a beneficiary, the State expects to receive approximately \$25 million to be used for diesel emission reduction projects and zero emission vehicle infrastructure projects that are intended to mitigate the excess nitrous oxide emissions produced by the Subject Vehicles.

Chairman Gans asked if this was a follow up to a temporary regulation.

Mr. Dragoni responded it was.

Chairman Gans asked if it was the same thing, but now Mr. Dragoni is requesting to make it permanent.

Mr. Dragoni replied affirmatively. He explained that the reason NDEP came a few months ago for the temporary approval was because at that time there was a national discussion between the selected trustee and EPA. He said that they were still bargaining on the consent decree and did not know when the agreement was going to take place. He said that the moment the consent agreement is signed, we would have 60 days to apply for the beneficiary status. He said that the EPA told the states that it could be any time from January; therefore, that is the reason we had to come in front of the SEC in May and ask for a temporary regulation.

Chairman Gans stated he thought the Commission remembered this from the May meeting and asked if there were any concerns.

Vice Chairman Porta asked if NDEP anticipated that once the Volkswagen settlements are complete and the payments have been made to all of the states, this regulation could come into play somewhere down the road with another entity.

Mr. Dragoni responded NDEP did not know, but they did know that there have been other car manufacturers that have presented similar issues and there is still an ongoing investigation, so it might be possible.

Chairman Gans stated it looked like they are passing a regulation to get \$25 million.

Mr. Dragoni explained that without passing this regulation, it would be impossible for NDEP to apply as a beneficiary, and without being selected as a beneficiary, NDEP would not be able to receive funding for mitigation.

Chairman Gans stated he was not opposed to that, but did not want it to look like they were after the money and did not care what the regulation says and could hurt the State 10 years from now. He stated he wanted to be careful. He wanted to acknowledge where he thought Vice Chairman Porta was going.

Mr. Dragon stated that based on our research, NDEP is confident that, at least in the case of the Volkswagen settlement, the funds that will be received will be enough to largely offset the emissions that are currently allowed from the vehicles that have defective devices. He added that according to the consent decree, 85 percent of these vehicles will need to be off the road by the end of 2019.

Commissioner Perry stated that despite reading numerous articles, he did not understand if one of these Volkswagen diesels would it fail or pass if it was given an emissions test. He asked if it was the software that was the violation or would they actually fail.

Ms. Morgan Friend, with the Department of Motor Vehicles responded. She stated that based upon the year of the vehicle with the defective devices, if they were to receive an emission test at this time, they would pass because we are not looking at that type of a parameter for such a device.

Chairman Gans stated that it also answered his question.

Commissioner Perry stated to take the money, which goes towards cleanup. He asked if it has to go towards specific air quality improvements.

Mr. Dragoni responded it did.

Chairman Gans asked for public comment and there was none.

Motion: Vice Chairman Porta moved to permanently adopt Regulation R014-17. Commissioner Richardson seconded the motion. It passed unanimously.

8) Permanent Regulatory Petition - R015-17 Bureau of Air Quality Planning and Air Pollution Control: (For Possible Action) Mr. Kinder, Deputy Administrator, presented the permanent regulatory petition to the Commission (**Attachment 8**). 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.

Mr. Dragoni, Bureau Chief for Air Quality Planning, explained the proposed change of posting Public Notices. In the past two years, the Air Program has published notices for 64 permitting actions. He said only five notices generated comments. The proposed 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 allow for a faster correction of errors and rescheduling of events. He said that 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.

The Commission members agreed the font size on the website could be larger.

Mr. Jeff Kinder, Deputy Administrator, stated that one of the goals of the new website, in addition to making it more user friendly and information more readily available, is to make it more adaptable to for other devices such as tablets and iPhones.

Mr. Richardson stated that he thought it is hard to quantify the impact of public notices in the newspaper. The only measure might not be the comments you receive, but how many people receive information from that source and may act on that locally. He thought it would be hard to quantify that. He stated he understood wanting to streamline the process and the logistical problems hitting all the newspapers, especially in rural areas, while maintain the time requirements. However, he stated he hated to see us, as a government, going away from public noticing in newspapers that are generally more available to the public, particularly to rural people and people that aren't necessarily computer savvy. He stated he would like to see the time frames be satisfied by the E-notices, but to continue the newspaper notices to ensure that complete notification is being made to the public. He felt the money spent on newspaper notices was well spent. He stated that this way we would not be setting a precedent for government to say "the public was aware of it. Didn't you see the little tab on the website? If you had gone through and sought it out you could have found it." This is a completely different situation than someone sitting in their arm chair going through the paper and seeing something that may impact their life.

Jeff Kinder stated NDEP's thoughts are not that NDEP won't be interfacing with newspapers again. He reiterated what Mr. Dragoni said earlier, that NDEP sees the importance of them. What is

being asked is to make E-notice and E-access mandatory and give NDEP the flexibility to determine what the best focus effort is to get public participation. We are interested in public participation. Public participation makes the permitting process better. Being able to do E-notice and E-access and then potentially reaching out to the newspaper in the affected areas and providing the information using our Public Information Officer. We can allow the newspaper to decide what the best way to give public notice. Is it notice on page 7 that is important or is the issue big enough that maybe the newspaper chooses to run it on the front page. He stated that during the May SEC Meeting Vice Chairman Porta suggested to run one final public notice in all the newspapers in Nevada to alert the public to the fact that this change is being made. The notice will notify the public how to continue to get information to from us. It will let them know how to phone us and get on a mailing list so we can send mail directly to their mailbox, free of charge, if they are interested in getting information related to air quality permitting in their community.

Chairman Gans stated that he was a traditionalist and liked the newspapers. He indicated it was a difficult vote for him.

Mr. Richardson asked what was happening with other agencies regarding this issue. He stated he knew this had come up for other agencies and had not passed.

Mr. Kinder replied that there were other bills in the legislature but they were proposing to change a statute. NDEP's statutes do not require newspapers to be utilized for public notice. The statute requires public participation but does not dictate how to do it. He stated that there are some NDEP statutes that do require posting in the newspaper, and those are not being requested for change.

Motion: Commissioner King moved to permanently adopt Regulation R015-17 with the provision that NDEP monitors the effectiveness of the transition from publication in newspapers to the E-Notice process and report back to the SEC.

Chairman Gans asked for any comments.

Comment: Berry Smith, NV Press Association, stated that notices submitted to the paper are also published in E-notice. (Attachment 9).

Comment: Allen Biaggi, NV Mining Association, reads a statement (Attachment 10).

Comment: Joe Beetler, NV Mining Association, reads a statement (Attachment 11).

Valerie King reads a letter from Starla Lacy with NV Energy (Attachment 12).

Motion: Motion: Commissioner King moved to permanently adopt Regulation R015-17 with the provision that NDEP monitors the effectiveness of the transition from publication in newspapers to the E-Notice process and report back to the SEC.

Mr. Kinder accepted the proposed amendment, stating the newspaper was only one component and that there were multiple ways to enhance public participation.

Commissioner Perry seconded the motion. All voted in favor of adoption of the permanent regulation with exception of Commissioner Richardson.

11) Public Comment: (Discussion) Chairman Gans asked for public comment. There was none.

The next meeting was scheduled for December 5, 2017.

10) Adjournment: (Discussion) Meeting was adjourned at 4:34 p.m.

The audio recording of this meeting is available at:

http://nvleg.granicus.com/MediaPlayer.php?publish_id=4bc09b4f-996f-11e7-b89c-00505691de41

ATTACHMENTS

ATTACHMENT 1: Tahoe Western Asphalt, LLC Penalty Presentation

ATTACHMENT 2: Tahoe Western Asphalt, LLC NOAV: 2619 and 2620

ATTACHMENT 3: Tahoe Western Asphalt, LLC NOAV: 2621

ATTACHMENT 4: Tahoe Western Asphalt, LLC NOAV: 2622

ATTACHMENT 5: Tahoe Western Asphalt, LLC NOAV: 2623

ATTACHMENT 6: Air Quality Odor Presentation Handout

ATTACHMENT 7: Solid Waste Management Plan Handout

ATTACHMENT 8: Permanent Regulatory Petition- R015-17 Handout

ATTACHMENT 9: Comment: Barry Smith, Nevada Press Association

ATTACHMENT 10: Comment: Allen Biaggi, Nevada Mining Association

ATTACHMENT 11: Comment: Joe Beetler, Nevada Mining

Association ATTACHMENT 12: Comment: Starla Lacy, NV Energy

ATTACHMENT 1:

Tahoe Western Asphalt, LLC Penalty Presentation

AGENDA ITEM #4: Penalty Presentation

Tahoe Western Asphalt, LLC, Carson City

NOAV #'s 2619, 2620, 2621, 2622, and 2623 with total proposed penalty of \$33,045.00

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.

- 4a) TWA was required to conduct initial performance tests for Particulate Matter (PM) / Particulate Matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) / Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM_{2.5}) 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/PM₁₀/PM_{2.5} were conducted on April 25, 2017 and retesting was conducted on May 23 and 25, 2017.
- 4b) TWA was required to conduct Initial Opacity Compliance Demonstrations (IOCD) 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, IOCD's 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). IOCD's were conducted on July 13, 2017 with results submitted to the BAPC on July 27, 2017.
- 4c) On April 25, 2017, the BAPC staff was on site for observation of a compliance source test of System 02 – Asphalt Plant: Drum Dryer Mixer/Burner (S2.001) during which they observed the system exceeding the 20% opacity limit set forth in the Operating Permit. The BAPC staff conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 22.5%, equating to 113% of the permit limit.
- 4d) On April 27, 2017, the BAPC staff was on site 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. The BAPC staff conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 32.08%, equating to 160% of the permit limit.

AGENDA ITEM #4: Penalty Presentation (Continued)

4e) On April 28, 2017, the 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. The BAPC staff conducted an EPA Method 9 visible emission observation test and determined that the average opacity exiting the stack was 28.5%, equating to 143% of the permit limit.

On July 11, 2017, an enforcement conference was held with TWA to review the findings of all current Notices of Alleged Violation and Orders (NOAV), afford TWA an opportunity to provide evidence of extenuating facts relative to the findings, and to determine whether issuance of the NOAV's was or was not warranted. TWA did not dispute the findings and did not present any information to indicate that the violations had not occurred as alleged. On July 19, 2017, five (5) NOAV's were issued as follows:

- **4a) NOAV #2619:** Failure to conduct required initial performance testing.
- **4b) NOAV #2620:** Failure to conduct Initial Opacity Compliance Demonstrations.
- **4c) NOAV #2621:** Failed visible emissions observation for opacity.
- **4d) NOAV #2622:** Failed visible emissions observation for opacity.
- **4e) NOAV #2623:** Failed visible emissions observation for opacity.

The BAPC staff reviewed the penalty matrix and provided the recommended penalty amounts of **\$2,520.00** for NOAV #2619, **\$6,600.00** for NOAV #2620, **\$6,450.00** for NOAV #2621, **\$10,875.00** for NOAV #2622, and **\$6,600.00** for NOAV #2623 considering the base penalty, extent of deviation, and penalty adjustment factors. These represent TWA's fifth, sixth, seventh, eighth, and ninth air quality violations within the last 60 months. No appeals were filed related to NOAV #'s 2619, 2620, 2621, 2622, and 2623.

The BAPC total recommended penalty for the five (5) NOAV's is **\$33,045.00**.

AGENDA ITEM #4: Vicinity Map

Tahoe Western Asphalt, LLC, Carson City

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

Coordinates: North 4,343.05 KM, East 268.52 KM – UTM Zone 11 (NAD 83)



AGENDA ITEM #4: Photo Documentation

Tahoe Western Asphalt, LLC, Carson City



Photo 1: Visible emission observation showing average opacity of 22.5% on April 25, 2017.



Photo 2: Visible emission observation showing average opacity of 28.5% on April 28, 2017 (image taken from BAPC video).

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

Bradley Crowell
Director



CHAIRMAN
Eugene Gans
Las Vegas, NV

VICE CHAIRMAN
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Resources

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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

August 9, 2017

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

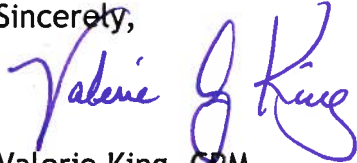
The recommended penalties were calculated using a penalty matrix previously approved by the SEC.

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

ATTACHMENT 2:

Tahoe Western Asphalt, LLC NOAV: 2619 and 2620



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/PM₁₀/PM_{2.5} 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

**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 (S2.001)
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

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

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>N/A</u> %
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%)	<u>N/A</u> %
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) =	5% X 4 =	<u>20</u> %
Total Penalty Adjustment Factors - Sum of A & B:		<u>20</u> %

IV. Total Penalty

<u>\$2,100.00</u> Penalty Subtotal (from Part II)	X	<u>20%</u> Total Adjustment Factors	=	<u>\$420.00</u> Total Adjustment
<u>\$2,100.00</u> Penalty Subtotal (from Part II)	+	<u>\$420.00</u> Penalty Increase or Decrease	=	<u>\$2,520.00</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 $\geq 20\%$ 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 & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources:	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to r
Major & SM sources:		
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)

**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

\$200.00 x 1 System (System 02) = \$200.00
\$200.00 x 3 Systems (Systems 01, 03, & 04) = \$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

**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:

<u>\$200.00</u>	X	<u>3.5</u>	=	<u>\$700.00</u>
Dollar Amount		Number of Months		Gravity Fine

<u>\$600.00</u>	X	<u>6</u>	=	<u>\$3,600.00</u>
Dollar Amount		Number of Months		Gravity Fine

=	<u>\$4,300.00</u>
	Total Gravity Fine

II. Economic Benefit

A.	<u>\$0.00</u>	+	<u>\$0.00</u>	=	<u>\$0.00</u>
	Delayed Costs		Avoided Costs		Economic Benefit

Subtotal	<u>\$4,300.00</u>	+	<u>\$0.00</u>	=	<u>\$4,300.00</u>
	Total Gravity Fine		Economic Benefit		Fine Subtotal

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>N/A</u> %
------------------------------	--	--------------

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%)
		<u>N/A</u> %

2.	All Recent Violations (NOAVs) in previous 5 years: (+5%) X (Number of recent Violations) = 5% X 4 =	<u>20</u> %
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Total Penalty Adjustment Factors - Sum of A & B:	<u>20</u> %
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**Nevada Division of Environmental Protection
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations**

IV. Total Penalty

<u>\$4,300.00</u>	X	<u>20%</u>	=	<u>\$860.00</u>
Penalty Subtotal (from Part II)		Total Adjustment Factors		Total Adjustment
<u>\$4,300.00</u>	+	<u>\$860.00</u>	=	<u>\$5,160.00</u>
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 $\geq 20\%$ 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 & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources:	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to r
Major & SM sources:		
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)

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/PM₁₀/PM_{2.5} 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/PM₁₀/PM_{2.5} 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/PM₁₀/PM_{2.5} 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.

ATTACHMENT 3:

Tahoe Western Asphalt, LLC NOAV: 2621



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

**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 (\$2.001)
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:

\$1,500.00	X	1	=	\$1,500.00
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

A.	<u>\$0.00</u> Delayed Costs	+	<u>\$0.00</u> Avoided Costs	=	<u>\$0.00</u> Economic Benefit
Subtotal	<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		<u>N/A</u> %
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%)	<u>300</u> %
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) =	5% X 6 =	<u>30</u> %
Total Penalty Adjustment Factors - Sum of A & B:		<u>330</u> %

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 $\geq 20\%$ 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 & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources:	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to r
Major & SM sources:		
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)

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.

ATTACHMENT 4:

Tahoe Western Asphalt, LLC NOAV: 2622



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

**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 (\$2.001)
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

A.	<u>\$0.00</u> Delayed Costs	+	<u>\$0.00</u> Avoided Costs	=	<u>\$0.00</u> Economic Benefit
Subtotal	<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		<u>N/A</u> %
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%)	<u>300</u> %
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) =	5% X 7 =	<u>35</u> %
Total Penalty Adjustment Factors - Sum of A & B:		<u>335</u> %

IV. Total Penalty

<u>\$2,500.00</u> Penalty Subtotal (from Part II)	X	<u>335%</u> Total Adjustment Factors	=	<u>\$8,375.00</u> Total Adjustment
<u>\$2,500.00</u> Penalty Subtotal (from Part II)	+	<u>\$8,375.00</u> Penalty Increase or Decrease	=	<u>\$10,875.00</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 $\geq 20\%$ 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 & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources:	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to r
Major & SM sources:		
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 5:

Tahoe Western Asphalt, LLC NOAV: 2623



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.

**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**

II. Economic Benefit

A.	<u>\$0.00</u> Delayed Costs	+	<u>\$0.00</u> Avoided Costs	=	<u>\$0.00</u> Economic Benefit
Subtotal	<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 8 = 40 %

Total Penalty Adjustment Factors - **Sum of A & B:** 340 %

IV. Total Penalty

<u>\$1,500.00</u> Penalty Subtotal (from Part II)	X	<u>340%</u> Total Adjustment Factors	=	<u>\$5,100.00</u> Total Adjustment
<u>\$1,500.00</u> Penalty Subtotal (from Part II)	+	<u>\$5,100.00</u> Penalty Increase or Decrease	=	<u>\$6,600.00</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 $\geq 20\%$ 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 & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources:	$r < 1.2$	(none)
<i>(all pollutants are minor)</i>	$r \geq 1.2$	proportional to r
 Major & SM sources:		
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 6:

Air Quality Odor Presentation Handout

**Overview of NDEP
Odor Regulations under Nevada
Administrative Code (NAC)
Chapter 445B – Air Controls**



**State Environmental Commission (SEC)
Regulatory Hearing**

September 13, 2017



OVERVIEW OF NDEP ODOR REGULATIONS UNDER NAC CHAPTER 445B – AIR CONTROLS

Overview of
NDEP Odor

Regulations under

Nevada

Administrative
Code (NAC)

Chapter 445B –
Air Controls

September 13,
2017

Presented by the Nevada Division of
Environmental Protection (NDEP) –
Bureau of Air Pollution Control (BAPC)

Lisa Kremer, P.E., Chief

**Travis Osterhout, P.E., Supervisor, Compliance &
Enforcement**



PRESENTATION OUTLINE

- Federal Regulations
- State Regulations
- History of Odor Complaints
- Addressing Odor Complaints
- Information Specific to Asphalt Plants
- Conclusion
- Questions
- Contact Information

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017



FEDERAL REGULATIONS

EPA's "Regulatory Options for the Control of Odors" document EPA-450/5-80-003 from February 1980:

- In response to Section 403(b) of Clean Air Act Amendments of 1977 that require a study of the effects of odors and odorous emissions

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017



STATE REGULATIONS

Nevada Administrative Code (NAC) Chapter 445B:

- NAC 445B.116 “Odor” defined.
- NAC 445B.22087 Odors.
- NAC 445B.281 Violations: Classification; administrative fines.

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017



STATE REGULATIONS (continued)

Overview of
NDEP Odor

Regulations under
Nevada

Administrative
Code (NAC)

Chapter 445B –
Air Controls

September 13,
2017

NAC 445B.116 “Odor” defined:

“Odor” means a characteristic of a **regulated air pollutant** which makes it perceptible to the sense of smell.



STATE REGULATIONS (continued)

NAC 445B.22087 Odors:

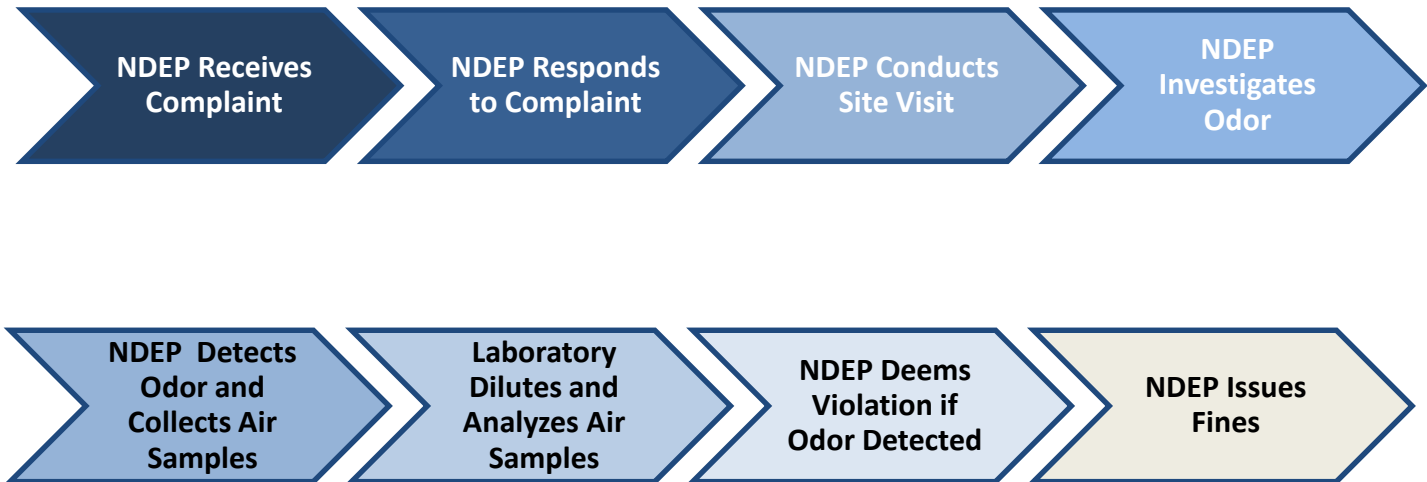
1. No person may discharge or cause to be discharged, from any stationary source, any material or regulated air pollutant which is or tends to be offensive to the senses, injurious or detrimental to health and safety, or which in any way interferes with or prevents the comfortable enjoyment of life or property.
2. The Director shall investigate an odor when 30 percent or more of a sample of the people exposed to it believe it to be objectionable in usual places of occupancy. The sample must be at least 20 people or 75 percent of those exposed if fewer than 20 people are exposed.
3. The Director shall deem the odor to be a violation if he or she is able to make two odor measurements within a period of 1 hour. These measurements must be separated by at least 15 minutes. An odor measurement consists of a detectable odor after the odorous air has been diluted with eight or more volumes of odor-free air.



STATE REGULATIONS (continued)

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017





STATE REGULATIONS (continued)

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

Odor Sampling Equipment:

- Vacuum Chamber and Tedlar Bags





STATE REGULATIONS (continued)

NAC 445B.281 Violations: Classification; administrative fines (continued):

	First Offense	Second Offense	Third Offense
NAC 445B.22037 , fugitive dust.....	\$500	\$1,000	\$2,000
NAC 445B.22067 , open burning.....	250	500	1,000
NAC 445B.2207 , incinerator burning.....	250	500	1,000
NAC 445B.22087 , odors.....	250	500	1,000
Subsection 3 or 4 of NAC 445B.232 , reporting of excess emissions.....	250	500	1,000
Subsection 8 of NAC 445B.252 , testing and sampling reporting.....	250	500	1,000
Subsection 2 of NAC 445B.265 , reporting of monitoring systems.....	250	500	1,000
Paragraph (e) of subsection 1 of NAC 445B.275 , recordkeeping, monitoring, reporting or compliance certification.....	250	500	1,000
NAC 445B.331 , change of location.....	250	500	1,000

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017



STATE REGULATIONS (continued)

NAC 445B.281 Violations: Classification;
administrative fines:

All minor violations become major violations upon the occurrence of the fourth violation of the same section within a period of 60 consecutive months.

Overview of

NDEP Odor

Regulations under

Nevada

Administrative

Code (NAC)

Chapter 445B –

Air Controls

September 13,

2017



HISTORY OF ODOR COMPLAINTS

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017

SFY13 - SFY17:

- 511 Total Complaints
 - Approximately 63% Odor-Related (323 Complaints)

Type of Source	Percentage of Odor Complaints
Oil Refining	65.9%
Dairy	13.3%
Asphalt	9.0%
Miscellaneous	5.3%
Minerals	3.4%
Food Preparation	1.9%
Wood Preserving	1.2%



ADDRESSING ODOR COMPLAINTS

Overview of

NDEP Odor

Regulations under

Nevada

Administrative

Code (NAC)

Chapter 445B –

Air Controls

September 13,

2017

ODORS ARE COMPLEX ISSUES!

However, odor complaints may be addressed when other air pollution control concerns are resolved.

- But, there is **not** always a correlation.



ADDRESSING ODOR COMPLAINTS (continued)

Overview of
NDEP Odor

Regulations under
Nevada

Administrative
Code (NAC)

Chapter 445B –
Air Controls

September 13,
2017

Previous NDEP Odor Measurements:

- Significant number of complaints received regarding an oil refining facility
- 14 air samples taken
- Samples analyzed
- Results were negative



Overview of
NDEP Odor

Regulations under
Nevada

Administrative
Code (NAC)

Chapter 445B –
Air Controls

September 13,
2017

ADDRESSING ODOR COMPLAINTS (continued)

Previous Approaches to Addressing Odor Complaints:

- Facilities have enclosed processes
- Facilities have installed control equipment to either address the odor issue directly; or to address other air pollution concerns



INFORMATION SPECIFIC TO ASPHALT PLANTS

Overview of
NDEP Odor

Regulations under
Nevada

Administrative
Code (NAC)

Chapter 445B –
Air Controls

September 13,
2017

Agency for Toxic Substances and Disease Registry (ATSDR):

- Determined odors from asphalt plants are not generally a health hazard
- However, the document recommended:
 - Install closed-system transfer units to reduce stray emissions; and
 - Employ techniques to reduce particulate matter



CONCLUSION

- The NDEP takes all complaints seriously; and each odor complaint is addressed.
- Staff coordinates with City/County representations as their codes address odor concerns as well.
- The NDEP is working on additional ways to streamline the process.
- Additional recordkeeping from the public would be helpful.

Overview of

NDEP Odor

Regulations under

Nevada

Administrative

Code (NAC)

Chapter 445B –

Air Controls

September 13,

2017



QUESTIONS

Overview of
NDEP Odor
Regulations under
Nevada
Administrative
Code (NAC)
Chapter 445B –
Air Controls

September 13,
2017





CONTACT INFORMATION

Lisa Kremer, P.E., BAPC Chief
lkremer@ndep.nv.gov / (775) 687-9336

**Travis Osterhout, P.E., BAPC Supervisor,
Compliance & Enforcement**
travis.osterhout@ndep.nv.gov / (775) 687-9530

NDEP Spill Hotline
687-9485 / (888) 331-6337

Overview of

NDEP Odor

Regulations under

Nevada

Administrative

Code (NAC)

Chapter 445B –

Air Controls

September 13,

2017

ATTACHMENT 7:

Solid Waste Management Plan Handout

State of Nevada Solid Waste Management Plan 2017



Prepared by
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249

For the
Nevada State Environmental Commission

Revised 8/22/17

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EXECUTIVE SUMMARY

Nevada's Solid Waste Management Plan (*Plan*) provides a current snapshot of the State's existing Solid Waste Management system in accordance with applicable statutes and regulations. The *Plan* describes the roles and responsibilities of State and local government, and current trends in solid waste management. It also identifies management challenges and proposes solutions for future consideration to improve solid waste management in Nevada.

Nevada Revised Statutes (NRS) 444.570 requires the State Environmental Commission (SEC), in cooperation with governing bodies of Nevada's municipalities to develop a plan for a statewide solid waste management system. The *Plan* strives to fulfill this requirement, providing information and guidance to support:

1. The SEC in their adoption of solid waste management regulations;
2. The Nevada Division of Environmental Protection (NDEP) in their efforts to effectively allocate solid waste management resources;
3. Nevada's municipal governments in their efforts to develop and implement effective solid waste management plans and ordinances; and
4. Stakeholders and their activities to provide solid waste services to Nevada's communities and businesses statewide.

In Nevada, state and local governmental entities share certain roles and responsibilities for solid waste regulations and program management. Governmental authority is defined in the Nevada Revised Statutes (NRS) 444.440 – 444.645 (see Appendix 5), and the Nevada Administrative Code (NAC) 444.570 – 444.7499 (see Appendix 6). In Southern Nevada, the authority to regulate solid waste is assigned by statute to Clark County's Southern Nevada Health District (SNHD), and in the North to the Washoe County Health District (WCHD). NDEP is the solid waste management authority for all other counties of the State.

Regulatory programs implemented by all three solid waste management authorities (SWMA) primarily focus on the administration of the environmental protection standards for the collection

and disposal of solid waste; however, the NDEP has additional responsibilities for statewide planning, public information, and educational activities. The local municipal governments are responsible for planning and implementing solid waste management systems for the solid waste generated in their municipalities.

Statewide Trends (Section 2)

This section addresses current trends in Landfills, Collection, Waste Generation and Recycling Rates, Importation, and Data Collection and Reporting.

Noteworthy Trends...

Since the early 1990's, the major trend in Nevada's solid waste management infrastructure has been toward regionalization. Landfills range in size from the very small (3 tons per day) to one of the largest in the U.S. (Apex, according to a 2016 report, receives over 6,800 tons per day). Nevada's two largest landfills (Apex in Southern Nevada and Lockwood in the North) receive about 90% of all the municipal solid waste disposed in the entire state.

Solid Waste importation has decreased approximately 20% in the past 10 years; however, waste importation may increase due to an emerging trend toward existing landfills, and proposed new landfills, positioning themselves to accept larger amounts of imported waste.

Solid Waste Management Systems (Section 3)

The solid waste management systems in each of Nevada's 17 counties are profiled in Appendix 3. Each description includes a map of the county showing where the solid waste facilities are located, and a companion profile describing the solid waste infrastructure and services.

Solid Waste Management Issues (Section 4)

The challenges facing landfills, Recycling and Waste Prevention, Importation of Solid Waste, Special Waste Management, Rural Solid Waste Management, Illegal Dumping and Open Burning, and State and Local Funding are covered in this section. The *Plan* provides suggestions for future consideration to improve Nevada's solid waste management system.

Noteworthy Changes and Challenges...

Due to new research on traditional landfill liner requirements, the Plan recognizes that site-specific conditions are critically important in the liner decision-making process.

Nevertheless, any effort to further develop Nevada's solid waste disposal infrastructure must put the highest priority on carefully assessing new innovations in landfill design to ensure that they protect the environment.

Recycling and Waste Prevention (Section 4.2)

In 1991, Assembly Bill (AB) 320 was enacted and set the stage for Nevada's entrance into the world of recycling. Shortly thereafter, a 25% recycling goal was set in law for each municipality that is required to have a recycling program.

Noteworthy Changes and Challenges...

For the past several years, Douglas, Washoe, and Carson City counties have surpassed the 25% recycling goal. Nevada's largest county, Clark, surpassed the 25% goal in 2012, but has since struggled to repeat those numbers. Since Nevada began tracking recycling rates, the statewide rate steadily increased to over 28.8% in 2012, but has fallen back to 22.3% in 2016. Proven as a powerful tool for increasing both participation and recycling rates, the availability of single-stream recycling has expanded to approximately 90% of Nevadans through the diligent efforts of several of Nevada's larger municipalities.

As the largest county in Nevada, and as such, seen as the greatest opportunity for increasing the State's overall recycling rate, the NDEP continues to promote recycling in Clark County and has implemented even more measures to increase recycling activity.

To evaluate the pros and cons of specific types of recycling, the Nevada Legislature authorized two studies: an electronics waste (e-waste) study in 2009 and a deposit on recyclable products study in 2011. Neither study evidenced enough clear benefit to warrant passage.

In counties over 100,000 in population, a recent bill amendment mandated that recycling services must be made available to newly constructed and major renovated multi-family

dwellings (MFDs), such as apartment complexes and condominiums. For approval, plans for said construction and/or renovation must provide space for collecting recyclables on premises.

Waste Importation (Section 4.3)

Although importation has been in decline, business interests and rural community development planners are beginning to market Nevada’s waste disposal capacity to out-of-state customers. Given this trend and the US Supreme Court’s prohibition on restriction of waste flow, it appears Nevada will continue to receive imported waste.

Special Waste Management (Section 4.4)

Because of their physical, chemical and/or biological characteristics, “special wastes” have the potential to be hazardous to living organisms and therefore must be specially handled to prevent exposure to them or release to the environment.

Noteworthy Changes and Challenges...

Following several elemental mercury spills in school-settings, NDEP developed a webpage (<https://ndep.nv.gov/land/mercury>) and a brochure to inform the public of the dangers, proper handling and disposal of “household” mercury. A household generated solid waste with the identical characteristics of a hazardous waste is exempt from federal regulations as a hazardous waste.

Medical or pharmaceutical wastes generated by medical and veterinary facilities (e.g., businesses) are generally well-managed through the availability of commercial medical waste disposal services throughout the State. However, disposal services for home-generated medical and pharmaceutical wastes are harder to find as the demand continues to grow.

E-waste continues to grow in volume as does the concern with their components, many of which have been identified as hazardous waste (older model TV cathode ray tubes (CRTs), computer monitors, and cell phones, etc.) As industry and government at the national level

search for ways to relieve the accumulation of e-waste, the emphasis in Nevada is on public education. Informing Nevadans of recycling and disposal locations available in their areas is a key element in e-waste management. NDEP continues to provide support for e-waste collection events and promotes reclamation efforts wherever possible.

Rural Solid Waste Management (Section 4.5)

Due to their sparse populations, many of Nevada's rural municipalities are struggling to provide even the basic elements of a solid waste management system. Rural solid waste management (SWM) systems could benefit greatly from more coordinated planning efforts among communities, landfill operator training programs, and public education regarding recycling and waste reduction. Reinstating the State's recycling and solid waste grant program could provide assistance to local governments to augment their planning efforts and acquire necessary equipment.

Illegal Dumping and Open Burning (Section 4.6)

In 2013, the Nevada Legislature passed Senate Bill 449 which increased enforcement penalties for illegal dumping in an effort to further protect the environment. Illegal, or open dumping, is a persistent problem for both rural and urban areas. Fundamentally local in nature, a combination of local solid waste management planning, local public education, and coordinated enforcement at the local level is essential for success in combating this problem. Local community groups have been instrumental in organizing efforts to control illegal dumping, such as community cleanup projects that include the participation of local government officials, and using public information campaigns to raise awareness and promote a sense of environmental stewardship in its citizenry.

State and Local Funding (Section 4.7)

To supplement their allotted State Tire Fund (tax) revenues, all three SWMAs have established fees on disposal, permitting, and other activities associated with solid waste management. In October 2014, the SEC approved the implementation of solid waste fees for NDEP with collection beginning in 2015. These new solid waste fees are only applicable to solid waste management facilities under the DCNR-NDEP's jurisdiction. This new funding source will help to defray the State's costs of managing and regulating solid waste.

Noteworthy Changes and Challenges...

Nevada's rural local governments may also require increased funding to support local waste management operations. Although local taxing authority may be available, the tax base for some communities may not be sufficient to generate needed revenue. In such locations, private solid waste companies may not be profitable, leaving the municipality to face significant challenges meeting their solid waste needs in a manner that complies with all applicable environmental regulations.

Key Stakeholders

Although NDEP is required to submit this *Plan* to the SEC, it is also intended to be used as a resource and guide for the State Legislature, NDEP, SNHD, WCHD, state and local agencies, and Nevada's municipal governments as they seek to craft effective Solid Waste Management laws, regulations and policies. It is hoped that the *Plan* also provides useful information to generators of solid waste (residents, businesses, and various industries) and solid waste service providers (refuse collectors, landfill operators, recyclers). Implementation of the suggestions provided for future consideration in each section of the *Plan* could further serve to enhance and strengthen solid waste management in Nevada.

ATTACHMENT 8:

Permanent Regulatory Petition - R015-17 Handout

**Permanent Regulation R015-17
Amendments to Nevada
Administrative Code (NAC) 445B**



**State Environmental Commission (SEC)
Meeting**

September 13, 2017



Permanent Regulation R015-17 Amendments to Nevada Administrative Code (NAC) 445B

Permanent
Regulation R015-
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Amendments to
Nevada
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Code (NAC) 445B

September 13,
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Presented by the Nevada Division of
Environmental Protection (NDEP) – Bureau
of Air Quality Planning (BAQP) and the
Bureau of Air Pollution Control (BAPC)

Jeffrey Kinder, P.E., Deputy Administrator, NDEP

Dr. Danilo Dragoni, Chief, BAQP



PRESENTATION OUTLINE

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- Objective of Proposed Amendments
- Existing Federal and State Regulations
- Effectiveness of Current Regulations
- Proposed NAC Changes
- Improvements to Public Participation
- New NDEP Website Demonstration



OBJECTIVE OF PROPOSED AMENDMENTS

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The objective of these proposed amendments are to remove mandatory requirements that have been proved to be ineffective and an inefficient use of public resources; and that have produced unnecessary delays in the permitting process.

The Air Program would like to:

- Replace current requirements with new requirements that satisfy public participation; and
- Utilize those additionally realized resources to increase public participation.



FEDERAL REGULATIONS

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October 5, 2016 – EPA issued a final rule revising its public notice regulations for the New Source Review, Title V and Outer Continental Shelf permit programs of the Clean Air Act.

While the Clean Air Act requires permitting authorities to provide the opportunity for public participation in the processing of air permits, the statute does not specify the best or preferred method for providing public notice.



FEDERAL REGULATIONS (continued)

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EPA's 2016 final rule removes the mandatory requirement to provide public notice for draft permits (and certain other program actions) by newspaper publication and instead provides for electronic-notice (e-notice) of these actions.

Permitting authorities that implement e-notice also are required to post the draft permit on a website (e-access).

The rule requires a single consistent noticing method for all subject notices to avoid confusion.



FEDERAL REGULATIONS (continued)

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EPA final rule addressed “public participation” in 40 CFR Parts 51, 52, 55, 70, 71 and 124

- 40 CFR Part 51 – State Implementation Plan – NDEP’s Minor Source Permitting Program
- 40 CFR Part 70 – Program Approval – NDEP’s Major Source Permitting Program (or Title V)
- 40 CFR Part 52 – Prevention of Significant Deterioration (delegated)



STATE REGULATIONS

Public participation requirements may include:

- Placing Director's Review (Review), Draft Operating Permit (Permit) and Notice of Proposed Action (Notice) on-file at NDEP Office and posting on NDEP's website.
- **Publishing Notice of Proposed Action in a Newspaper and/or providing a copy to the Library.**
- Providing Notice to a Mailing List Maintained by NDEP.
- Providing the Review, Permit and Notice to EPA.
- Providing the Review, Permit and Notice to any Affected Local Air Pollution Control Agency.
- Providing the Notice to any Affected State.

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EFFECTIVENESS OF CURRENT REGULATIONS

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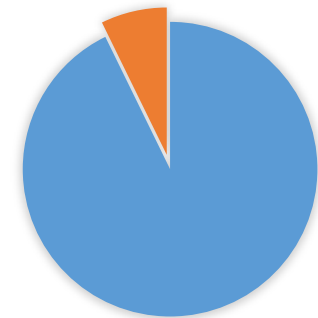
In the past 2 years, the Air Program has published notices for 64 permitting actions as summarized below:

- Class I – 19
- Class II – 31
- Class II General – 1
- NMCP - 13

Only 5 notices generated comments; however, 4 of those notices generated comments from the permit applicant.

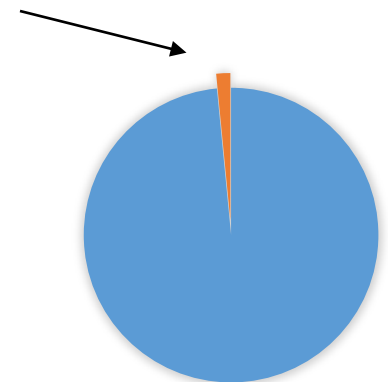
Only 1 of the 64 notices generated public comment!

With Comments



Without Comments

Actual Public Comment





EFFECTIVENESS OF CURRENT REGULATIONS (continued)

Of the 1 permitting action that generated interest, comments were received from:

- 3 Comments from NGO's
- 1 Comment from Affected Local Air Pollution Control Agency
- 1 Comment from Mailing List
- 1 Comment from Facility Representative

Calculation mistake in **permit application** trigger additional federal requirements.

Public comment most likely triggered by newspaper articles and unique nature of facility process, not physical publication of public notice.



WHAT AMENDMENTS ARE BEING REQUESTED

Nevada Administrative Code (NAC) Sections proposed to be amended:

Section	Description	LCB Draft Page
445B.3364	Operating Permit to Construct for Class I	5
445B.3395	New or significant revision of an Operating Permit for Class I	11
445B.3457	New or revision of Operating Permit for Class II	19
445B.3477	Class II General Permit	21
445B.3657	Determination of de-minimis mercury emissions	25
445B.3677	Review of mercury operating permit	29
445b.3683	New or revision of operating permit to construct for mercury program	34
459.953465	Chemical Accident Prevention Program (CAPP) – Receipt of application and period for public comment	36
486A.14	Designation for alternative fuel	39

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WHAT AMENDMENTS ARE BEING REQUESTED (continued)

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Example 445B.3477.2(a) – General Permit.

[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;~~ *Publish notice of the Director's proposed conditions and a copy of the proposed Class II general permit on an Internet website designed to give general public notice;*



WHAT AMENDMENTS ARE BEING REQUESTED (continued)

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The only exception is the amendment addressing the requirement to provide a copy of the notice AND application to a public library in the area (page 18 of LCB draft).

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;~~



ENAHANCING PUBLIC PARTICIPATION

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Significant amount of time and resources spent in coordinating and verifying that the newspaper or library properly and timely receive and handle the notice

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Approximately 100 hours are spent every year to assure proper and timely publication of the notices

NDEP believes that these resources could be invested in activities that are effective in engaging the public.



ENHANCING PUBLIC PARTICIPATION (continued)

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Mailing, e-mailing lists, and newsletters.

Libraries.

Public Information Officer contacting directly local newspapers when a permit application goes on notice.

UNR-Business Environmental Program Outreach Program.

The new NDEP website.



NDEP WEBSITE DEMONSTRATION

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Legal Notices

NOTICE OF PROPOSED ACTION by the State of Nevada Division of Environmental Protection Bureau of Air Pollution Control
PUBLIC NOTICE

Pursuant to Nevada Revised Statutes (NRS) Chapter 445B, the Nevada Administrative Code (NAC) Chapter 445B, and the Clean Air Act, the Nevada Division of Environmental Protection (NDEP) is issuing the following Notice of Proposed Action. The Director received an application for an Operating Permit to Construct (OPTC) roll-over to Class I Air Quality Operating Permit AP4953-1148.02 (FIN A0018) from the following applicant: Refuse, Inc. as Lockwood Regional Landfill, 2401 Canyon Way, Sparks, NV 89434. Refuse, Inc. as Lockwood Regional Landfill (Refuse) is located approximately 3 miles East of Vista Blvd in Sparks, Nevada on Interstate 80, with the landfill approximately 2 miles South of Interstate 80 along Canyon Way. The project is located in all or portions of Sections 22-23 and 26-27, Township 19N, Range, 21E, M.D.B. & M. The primary purpose of the Lockwood Regional Landfill is for the disposal of municipal solid waste (MSW) and other wastes. The decomposition of the waste produces Landfill Gas. Refuse proposes to roll over System 06A (System 09 in OPTC) Landfill Gas (LFG) Internal Combustion Engines (S2.011 & S2.012) from the Class I Air Quality Operating Permit to Construct (OPTC) AP4953-2970 to the Class I (Title V) Air Quality Operating Permit AP4953-1148.02 in this permit action. Additionally, Refuse submitted an addendum to the permit application requesting to increase System 05 Candlestick Flare (S2.010). Finally, operating hour time restrictions were applied to Systems 02A through 02E Wood Chipping Circuits (PF1.001-PF1.005, S2.001). On the basis of the preliminary review and the requirements of the NRS, the NAC and the Clean Air Act, the Director is hereby announcing his intent to issue the proposed Class I Air Quality Operating Permit based on a review of the information submitted. **A copy of this document, the draft operating permit, and the director's review will be available for public inspection at http://ndep.nv.gov/admin/public.htm#air_p and the following location: Storey County Library, 95 R St, Virginia City, NV 89440 (775) 847-0956.** Persons wishing to comment regarding this proposed action, or to request a hearing pursuant to NRS 445B Air Pollution and NAC 445B Air Controls, should submit their comments or request in writing, either in person or by mail within thirty (30) days to: **Jennifer Collier, Nevada Division of Environmental Protection Bureau of Air Pollution Control, 901 South Stewart Street, Suite 4001 Carson City, Nevada 89701, (775) 687- 9551.** The application, Director's Review, proposed draft operating permit, any comments received, and other relevant information may be copied at the above address or copies may be obtained by written request to the above address. Written comments or objections will be received at NDEP, above address, until April 19, 2017, and will be retained and considered prior to final action on the proposed Class I Air Quality Operating Permit. Upon completion of the 30-day public comment period, the Bureau of Air Pollution Control (BAPC) will submit the proposed Class I Air Quality Operating Permit to the U.S. Environmental Protection Agency (EPA) for a 45-day review period. If the BAPC has not addressed any received comments in a satisfactory manner, and the EPA does not object to the Class I Air Quality Operating Permit during its review period, the public may submit a petition to the EPA requesting to reconsider issuance within 60 days after the expiration of the 45-day review period. Please bring the foregoing notice to the attention of all interested persons.

No 1999807 March 20, 2017



NDEP WEBSITE DEMONSTRATION (continued)

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Secure | <https://ndep.nv.gov>

Apps Imported From IE Air Markets Program

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

NEWS & NOTICES PERMITS & RESOURCES CONTACT US

Land Water Air Environmental Cleanup About

Start Your Search

Welcome to the Nevada Division of Environmental Protection

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.

Land Water Air Env. Cleanup



CONCLUSION

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Remove mandatory requirements that have been proved to be ineffective and an inefficient use of public resources; and that have produced unnecessary delays in the permitting process.

Invest the resources in activities that enhance public participation.

A final notice will be provided to the newspapers about the changes as a result of these amendments and advertise alternative access to information.

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QUESTIONS

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CONTACT INFORMATION

Dr. Danilo Dragoni, BAQP Chief
ddragoni@ndep.nv.gov / (775) 687-9340

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ATTACHMENT 9:

Comment & Letter from Barry Smith
Nevada Press Association



NEVADA PRESS ASSOCIATION

102 N. Curry St.
Carson City, NV 89703

T 775 885-0866
F 775 885-8233
nevadapress@att.net

www.nevadapress.com

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AUG 30 2017

ENVIRONMENTAL PROTECTION

Aug. 30, 2017

To: State Environmental Commission
901 South Stewart Street,
Suite 4001, Carson City, Nevada 89701-5249.

From: Barry Smith
Nevada Press Association
nevadapress@att.net
775-885-0866

Re: Proposed Regulation R015-17

I am writing in regards to proposed amendments to regulations of the Nevada Division of Environmental Protection that would reduce the amount of public notice to residents and taxpayers by removing the requirements for print publication. The goal of the State Environmental Commission should be to increase notice and the means by which the public is informed of state actions, but this proposal would do the opposite.

Nevada newspapers have long recognized the value in placing public notices online. That's why we've been doing it for nearly seven years now, at no additional cost. People deserve as much notice as possible of this important information — which includes not just notice of government functions such as city ordinances, public bids, and zoning regulations, but also protections of your individual rights — termination of parental rights, summons in a civil lawsuit, notice to sell property to enforce a judgment.

This regulation would reduce the amount of notice to Nevadans by the Nevada Division of Environmental Protection and would set a poor precedent, essentially eliminating notice to people with poor or slow internet access, which tends to be elderly, poor and rural residents. It would also greatly limit the exposure of online notices.

You may not be aware of all the ways that newspapers distribute public notices.

How public notices are distributed

Notices now are published in qualifying newspapers in each county and on their web sites and on a statewide site operated by the Nevada Press Association at Publicnoticeads.com. In fact, that

site contains a nationwide compilation of 47 states and the District of Columbia. It has been in place since 2010 and gets some 12 million page views a year. You can search by county and by newspaper for keywords. You can set up push notifications that will notify you by email when a keyword — for example, 'foreclosure' — comes up.

At the larger papers in Nevada, the notices are uploaded automatically every night to their websites and to the statewide site. The smaller papers do it manually, by saving the notices they are running that week and uploading them.

We also operate nevadapublicnotice.com, a landing page for notices. Also, most newspapers publish them on their own sites. For example, the Las Vegas Review-Journal has both RJLegalNotices.vegas and RJClassfieds.vegas. When you look for a notice, you know where to find it.

The key difference, though, is that the online notices are *in addition* to the print notices, which are delivered directly to Nevada households and mailboxes. I understand there is concern that print circulations are decreasing. However, Nevada newspapers continue to sell more than 90 million printed copies each year. Several million more people read them online.

A primary function of public notices is that they are disseminated throughout the community they affect. They don't just sit there for somebody to find. Depending on where you place the notice, they may be distributed to 200,000 homes in Las Vegas or 5,000 homes in Winnemucca. With the online distribution, the notices are available to millions. reviewjournal.com, for example, gets nearly 4 million visitors a month. The Reno Gazette-Journal also gets traffic in the millions, and other Nevada newspapers count their online visitors in the tens of thousands each month.

Standards for valid public notice

Many people use the terms 'public notices' and 'legal notices' interchangeably, but there are different types scattered throughout NRS. 'Legal' notices can affect people's individual property or rights.

With newspaper notice, clerks at the papers issue a notarized affidavit of publication, accompanied by a copy of the notice itself, which can be used in court to verify its true and accurate publication. This is the means to validate due process and is a crucial part of the notice process. There is no court standard for public notices posted solely on internet websites.

This is extremely important if a notice is ever challenged as being adequate or sufficient. I'm aware of a couple of instances in recent years where adequate notice of environmental matters became a significant issue. One was in Michigan, where the state was challenged on whether notice of additional pumping for a Nestle groundwater project was adequate because the notice was placed only online. Another, in 2012, involved a permit for a hog farm on an Arkansas river watershed.

Again, I believe it's in the state's best interest to ensure these notices are distributed as widely as possible.

This attempt to shift public-notices only to a web site would affect the people who rely on Nevada's small-town papers the most. These are places where internet service is spotty, at best, and where readership remains high, especially among older readers in rural areas. These are the county seats.

There are five key elements to public notices:

- **Independent** — A third-party publisher, such as a newspaper, has an economic and civic interest in ensuring the notice is published as required by statute or regulation.
- **Archived** — In a secure and publicly accessible place. Newspaper notices in Nevada are available dating back more than 100 years at the State Library & Archives.
- **Alert** — Notices are distinct from public records. They are distributed, or pushed, to the public — not merely made available if sought.
- **Verify** — Newspapers provide signed affidavits as proof of publication.
- **Secure** — Notices published online would need to be secure from any tampering or change, whether by good or bad intentions.

To illustrate what I mean, you'll find attached to this letter some screenshots of the results when I searched the State Environmental Commission website for "newspaper" in an attempt today to find the notices for this regulation and meeting. It turned up two results. Unfortunately, clicking both of those search results brought up "404-File not found" errors. How would you prove the notices were ever available to the public?

Similarly, a search for "newspaper" on NDEP's site turned up four results — none of which was about this regulation or meeting, even though the regulation is available. (See attachments.)

Significant value of public notices

Turning to the small-business impact statement, it concludes that the \$6,600 spent by NDEP on these notices would have an insignificant effect on newspapers. It's true that losing a single customer or subscriber isn't going to put a newspaper out of business, but from a business point of view every customer or subscriber lost means the business has to either find another customer to replace it or cut back on its own budget — whether that be payroll or other expenses. I'm not sure what NDEP would consider a significant impact — 10 customers? 20? 100? For the business, every lost customer is significant. The amount of money may be considered insignificant by NDEP, but there is substantial value in the notice given to Nevada residents.

The regulation calls for notices to be placed on some general public-notice website. To my knowledge, the only such site for Nevada is operated by the Nevada Press Association through its member newspapers. It does not specify how such a site would be operated, secured or archived.

There are some 350 government agencies in Nevada, most of them with their own site. If notices are scattered among hundreds of sites, it's impractical — if not impossible — for people to search all of them regularly to make sure they're not missing a notice important to them.

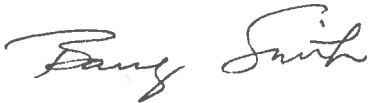
Are newspaper notices read? A June 2017 survey for the National Newspaper Association found: "More than half of the respondents, 51 percent, said they read the public notices in their local newspaper somewhat often to very often. Totalling all the respondents showed that 81 percent of the respondents read public notices at least some of the time. Contrast this with the number of people who visit their local government website: Forty-six percent said they never visit their local government site. And just 25 percent said they visit their local government website somewhat often to very often."

Reach more people, not fewer

The established system — where notices are published in the local newspaper, published online by the newspaper and by the Press Association and supplemented by placement on those agency sites — distributes those notices in a variety of ways to a variety of audiences. The goal is to reach as many people as possible who may be affected by the actions in the notice — the whole purpose of public notice.

At the NDEP workshop on July 25, I stated that I did not understand the goal or purpose of amending the regulation. I still don't. The goal of the Nevada State Environmental Commission should be to increase the amount of notice provided to the public about important issues — not to reduce it.

By removing notices from newspapers, you would be reducing substantially the exposure of those notices to Nevada residents. I urge you to reject the proposed amendments to the regulation. If you're interested in improving the process, we're certainly open to providing any help, advice or expertise in the field. Please feel free to contact me or any of the public-notice managers at newspapers around the state.

A handwritten signature in cursive script that reads "Barry Smith".

Barry Smith
executive director

ATTACHMENT 10:

Comment: Allen Biaggi, Nevada Mining Association

Testimony before the State Environmental Commission Air Quality Public Notice Provisions

**Allen Biaggi
September 13, 2007**

Mr. Chairman, Commission members my name is Allen Biaggi and I am here today representing the Nevada Mining Association.

For background, the Association has been in existence for 104 years and has more than 420 members representing mine owners and operators, vendors and those that serve the industry. NvMA provides a voice for Nevada's mining industry in federal, state, and local policy matters, community engagement, public education, and workforce development.

Structurally, the Association has a number of topic-based committees, one of which deals with environmental issues. The issue before you relates to modifications of the public notice requirements for NDEP's air quality programs. The Environmental Committee strongly endorses the proposed changes and encourages their passage.

As you are aware, all business and industry, not just mining, are adverse to uncertainty and sensitive to time delays. Additionally, it is in the best interest of the industry and to the public for the governmental entities to be as transparent as possible, and provide notice of proposed actions to the widest possible distribution.

Many rural newspapers are now weekly or bi-weekly, making the timing of print notices problematic. Under the present regulatory structure, the timing and approval of projects are dependent upon publication schedules, which can result in increased time frames for permit issuance. Additionally, instances have occurred where publication deadlines have been missed or where errors in publication have occurred, resulting in project delays of days or even weeks.

E-notice reaches a broader audience, in a more timely fashion and, quite frankly, is the state of the art means of public notification. In today's computer savvy environment, e-notice makes sense, is more effective and efficient, and is the way business and the public expect for outreach to occur.

For these reasons, the Nevada Mining Association strongly endorses the proposed action.

ATTACHMENT 11:

Comment: Joe Beetler, Nevada Mining Association

Testimony before the State Environmental Commission Air Quality Public Notice Provisions

**Joe Beetler
September 13, 2017**

Mr. Chairman, Commission members my name is Joe Beetler and I am here today representing the Nevada Mining Association as the chairman of the Air Working Group and also as an employee from the Sustainability and External Relations department of one of the NvMA member companies: Newmont Mining Corporation.

I've personally been professionally employed in the mining industry for 28 years, and engaged on air quality issues for 16 of those years. Over those years I've observed many changes in mining with technological advances. For example, ore types that weren't amenable to leaching for precious metals have made such by sophisticated processes like bio-oxidation, flotation, autoclaving and roasting. Traditional total station surveying has in most applications been replaced with Global Positioning System technology. Communications has advanced from the bag-phone to the smartphone. Even environmental protections have evolved from clay liners to HDEP leak detected liners systems. In these and so many other changes, the mining industry has embraced new technologies to meet the challenges of a new millennium.

Technology for providing public notices has also changed. From the town crier to the telegraph to the teletype and beyond. Online communication is now a way of life for the modern era. Most newspapers also publish and distribute their news, yes even local news in an online format. With a smartphone in nearly every household, information is only a few clicks away.

The NvMA Air Working Group and member companies such as Newmont strongly advocate for the modification of the public notice requirements for NDEP's air quality programs in keeping with technological advances. Concerned citizens are really more likely to reference an online source with available documents for review at their fingertips rather than searching for notices buried in the back pages of newsprint on a specific date and then in turn travelling to a public library to locate and copy off any relevant documents for review and comment.

It only makes sense to support a wider distribution of public information that is accomplished in a more timely fashion and that is less costly to the taxpayers.

ATTACHMENT 12:

Comment: Starla Lacy, NV Energy



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SEP 13 2017

ENVIRONMENTAL PROTECTION

September 8, 2017

Ms. Valerie King
Executive Secretary
Nevada State Environmental Commission
901 So. Stewart Street, Suite 4001
Carson City, NV 89701

Dear Mrs. King:

Re: Comment Submittal for the September 13, 2017 Agenda: Item 8 Permanent Regulation RO 15-17 Bureaus of Air Quality Planning and Air Pollution Control

On behalf of NV Energy, I am submitting the following comments associated with the Bureaus of Air Quality Planning/Air Pollution Control's proposed amendment pertaining to NAC Chapter 445B which is scheduled for hearing on September 13, 2017. Regrettably, I will be unable to attend the meeting in person and therefore ask that these comments be added to the record in my absence.

We wish the Commission to know that we fully support the NDEP proposal which would remove the requirement to provide public notice of a draft air permit or other program actions through publication in a newspaper. NDEP is proposing to instead provide for electronic noticing (e-notice) and website access (e-access) of those actions. We believe this change would allow for a broader and more efficient means of reaching the general public and importantly, would provide the ability to immediately correct or otherwise make timely changes to noticed information in the event it were necessary to do so.

We appreciate all consideration given to these comments, and thank you for this opportunity.

Sincerely,

A handwritten signature in blue ink that reads "Starla Lacy".

Starla Lacy
Vice President, Environmental, Safety and Land Resources
NV Energy