





NEVADA
**STATE ENVIRONMENTAL
 COMMISSION**

**FINAL
 MINUTES**

Regulatory Meeting

 TIME	 LOCATION
September 7, 2023 9:00 AM	Bryan Building, 901 South Stewart St. Tahoe Rm. 2nd Fl. Carson City, NV Video Conference 375 East Warm Springs Rd., Ste. 200 Las Vegas, NV

SEC members present:

Jason King, Vice Chairman
 Kacey KC
 Kathryn Landreth*
 J.J. Goicoechea
 Tom Smith*
 Adam Sullivan
 Rob Ghiglieri
 Alan Jenne
 Fred Reeder

*Participated remotely

SEC members absent:

Tom Porta, Chairman
 Jocelyn Torres

SEC staff present:

Ziwei Zheng, Deputy Attorney General
 Sheryl Fontaine, Executive Secretary

Loren Borst, Recording Secretary

**Nevada Division of Environmental Protection
 staff present:**

Jennifer Carr, Administrator
 Jeffrey Kinder, Deputy Administrator
 Jennifer Schumacher, Chief, Bureau of Air Pollution
 Control
 Chad Myers, Minor Source Supervisor
 Gregg Rosenberg, Major Source Supervisor

Public present:

Terry Reck, Reck Brothers LLC
 Tara Reck, Reck Brothers LLC
 Nathan Robertson, Reck Brothers LLC
 Sean Hiskett, Hiskett & Sons
 Steve Hiskett, Hiskett & Sons
 Conor Butkus, Stoel Rives
 Bryan McCampbell, PCC Structural
 Scott McNulty, Broadbent & Associates, Inc.

In these minutes:

- [Call to order, roll call, establish quorum](#)
 - [Public comments](#)
 - [Approval of prior meeting minutes](#)
 - [Air Programs Presentation](#)
 - [Regulatory Petitions](#)
 - [Administrator's briefing to the commission](#)
 - [Public comments](#)
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Begin Summary Minutes

1) Call to order, roll call, establish quorum (Discussion)

The meeting was called to order at 9:02 am by Vice Chair Jason King. Ms. Sheryl Fontaine, Executive Secretary, confirmed that the hearing was properly noticed, and a quorum was present. Vice Chair King welcomed new Commissioners Fred Reeder, Robert Ghiglieri, J.J. Goicoechea, and Alan Jenne.

Vice Chair King proceeded to have Ms. Fontaine read the housekeeping rules for the meeting. Vice Chair King asked if the Commissioners had had any contact with the companies present in the hearing. Seeing none, Vice Chair King moved on to the next agenda item.

2) Public comments

There was no public comment on non-agendized items.

3) Approval of December 14, 2022, minutes (Action item)

Vice Chair King requested comments from the Commission regarding the December meeting minutes. Commissioner Landreth listed her corrections to the minutes. Ms. Fontaine read the noted corrections and indicated those corrections would be made. With no additional changes to the minutes, Vice Chair King asked for a motion.

Motion: Approval of the December 14, 2022, minutes

By: Commissioner Landreth

Second: Commissioner Sullivan

Vote: Motion passed unanimously

Air Programs Presentation

4) Presentation to the Commission (Discussion)

Jeffrey Kinder, Deputy Administrator of NDEP, introduced the Bureau of Air Pollution Control (BAPC) and gave an overview of the presentation. The goals of the presentation are to provide an overview of NDEP's implementation of the federal Clean Air Act in Nevada, discuss the steps taken by NDEP with a facility before a Notice of Alleged Violation (NOAV) is issued, outline the process of issuing an Air Quality permit, and describe the compliance and enforcement processes. Mr. Kinder recognized Bureau Chief Jennifer Schumacher and Minor and Major Source Supervisors Chad Myers and Gregg Rosenberg.

Ms. Schumacher presented the different categories of Air Quality permits issued by the BAPC and the guidelines issuance of those permits within Nevada, focusing on a comprehensive overview of the Clean Air Act, classifications of air quality permits and actions that violate the permit's guidelines, and discussed the steps that lead up to a Notice of Alleged Violation. She pointed out jurisdiction within Nevada Counties for NDEP. Ms. Schumacher discussed the current Air Quality permits issued to date and explained the criteria that differentiate Class I and II air permits from Class II synthetic and major source permits. She explained the type and number of pollutants covered under Air Quality permits as well as the health and environmental impacts of fugitive dust and concerns surrounding facilities in non-compliance. She explained the process of applying for an air permit (including that the facility proposes its own emission limits) and permit review and issuance. The issued permit is considered an agreement between NDEP and the facility to meet regulations and determine the impact on federal air quality standards. Ms. Schumacher passed the presentation to Mr. Rosenberg to review the steps taken after a permit is issued as well as compliance efforts.

Mr. Rosenberg explained the legal authority held by NDEP to enforce the Clean Air Act. He mentioned the *Nevada Revised Statutes* (NRS) and *Nevada Administrative Code* (NAC) that define the legal responsibilities of BAPC. Mr. Rosenberg stated that before enforcement is initiated, the Bureau's Compliance staff looks at all aspects of the violation(s) and considers all circumstances before suggesting how the Enforcement branch should address the violation. There are two types of inspections, partial and full inspections. Full inspections assess all aspects of the permit and include a walkthrough during which the inspector looks for visible emissions, ensures that applicable air pollution controls are installed and operating correctly, examines the system for leaks, confirms the system configuration matches the permitted configuration, and checks for equipment not covered under the permit. Inspections also include a records review (including material rate throughput, fuel usage rate, visible emissions observations, and inspection logs). The primary way to tell if a facility is complying with permit limits is to assess the emissions records supplied by the facility. He described the training inspectors need to receive to efficiently assess a facility's compliance. Mr. Rosenberg passed the presentation to Mr. Myers to discuss the common air pollution controls seen during an inspection and details of source testing.

Mr. Myers explained the concepts of visible emission and opacity and how they relate to pollutant concentration. He further explained that EPA Test Method 9 is the primary method to quantify the opacity of visible emissions. NDEP's inspectors are certified to test emissions using the EPA Method 9. Mr. Myers stated to maintain certification, inspectors repeat the field portion of the training every six months. He described the process of visible assessment and that for most permits, the standard opacity limit is 20%, but it can be lower for some emission units. Mr. Myers explained that one of the most important aspects of a field inspection is to ensure air pollution control devices are working properly. The most common control device is a bag house. He described the three types of bag houses as well as some other, less common controls. Testing of these emission control devices is conducted by the facility regularly. If possible, NDEP inspectors will observe these tests. Final source test reports are then checked for accuracy. Mr. Myers emphasized regular testing is vital to proper record keeping.

Mr. Kinder concluded the presentation, summarizing the efforts NDEP makes to help bring non-compliant facilities back into compliance, and occasionally these efforts fail, requiring enforcement. In these uncommon cases, enforcement penalties are presented to the SEC.

Vice Chair King asked if there were any questions from the Commissioners.

Commissioner Jenne thanked Mr. Kinder for the explanation of the penalties. Vice Chair King asked how a smaller operator would know if they needed a permit.

Ms. Schumacher said there are small business environmental outreach programs set up to assist and work with the facilities, and that there are also some county resources available. Facilities are also able to contact NDEP directly with questions.

Vice Chairman King asked if NDEP denies many air permit applications. According to Ms. Schumacher, less

than 5% of applications are denied annually. This is primarily due to missing information. Vice Chair King asked for clarification that the permits are denied due to incompleteness. Ms. Schumacher confirmed and added that even after completeness issues were resolved if model standards or federal regulations are not met, by law, a permit cannot be issued.

Vice Chair King asked how many inspectors NDEP has and if the facilities know ahead of time inspectors are coming. Mr. Rosenberg said there are 6 staff for 700-plus facilities. Although facilities will receive an advanced warning for the quarter, inspections are unannounced. If there are issues, follow-up inspections are scheduled six months to one year later.

Commissioner Goicoechea asked about inspections on seasonal operations. Mr. Rosenberg stated the database includes information about seasonal sources and that inspections are planned for the busy seasons for each seasonal operation, which is usually summer. Flexibility is built into inspectors' schedules in case of a closed/non-operating facility.

Seeing no further questions from the Commissioners, Vice Chair King went to the next item on the agenda.

Regulatory Petitions

5) Hiskett & Sons LLC Fallon Batch Plant – NOAV No. 3040 (For Possible Action)

Deputy Administrator Danilo Dragoni presented the penalty with Nathan Rash for Hiskett & Sons Batch Plant. Hiskett & Sons Class II permit was issued on March 19, 2019, with the requirement that annual emissions inventory reports be provided to NDEP. During an inspection in December 2021, exceedances in emissions were found in the throughput of three systems in the amounts of 103%, 110%, and 112%. During the same inspection, there were no records of visible emissions observations as required by their permit, and record keeping and monitoring were insufficient for all three systems. Mr. Rash explained the violations were discussed with the facility, and both the missing records and visible emission observations were considered minor administrative violations totaling \$750 which the facility paid. The exceedance of the permitted limits is a major violation with a base penalty of \$600 which is then multiplied by the number of systems. No penalty adjustments were found to be appropriate, so the proposed penalty is the base penalty multiplied by the three systems in exceedance. This totals \$1,800.

Vice Chair King requested an explanation of the penalty matrix.

Mr. Rash explained that the matrix assigns a base penalty by facility size and offense. Adjustments may be made to the base penalty based on special circumstances and the severity of the offense, the extent of the deviation, opacity, toxicity of the release, and special environmental risks. Mr. Rash clarified a facility may not benefit economically through violation, and that can be factored into the penalty as well. No modifiers to the matrix were applied to NOAV 3040.

Vice Chair King called for questions from the Commission.

Commissioner Reeder asked if the actual output was put into the model, would the emissions be within acceptable levels.

Mr. Rash explained the modeling is conducted when the permit application is reviewed and is based on the values provided by the facility on the application. Hiskett & Sons have not changed their throughput limits for the permit.

Commissioner Goicoechea asked whether the model calculated by the initial output provides any leniency.

Mr. Rash stated models are typically based on hourly throughput limits which are then modeled over a period of time, depending on the federal standard for that pollutant. Mr. Dragoni reiterated modelling is based on EPA standards.

Commissioner KC asked if the facility wanted to increase their permitted throughput, what that process is, and the timeline to do so.

Mr. Dragoni said that if, with the new revisions, based on the emissions, the facility would still meet air quality standards, they would still need a new permit. The timeline is dependent on the class of the facility, but Class II generally takes 70 days from when NDEP deems the permit is complete.

Commissioner Goicoechea asked if there is any consideration given to the possibility of errors in the model, or if the facility exceeds its permitted throughput limit, they've exceeded and that's it.

Mr. Dragoni confirmed that, for this type of violation, NDEP only considers whether the facility exceeded its annual emissions limits, and reminded the Commission that limits are requested by the facility.

Commissioner Jenne asked if the initial throughput was derived from the facility's records.

Mr. Rash confirmed all records were provided by the facility and were submitted to NDEP.

Commissioner Goicoechea questioned if the records are required to show actual operating hours/days and whether the penalty is calculated by a set time over a certain number of weeks.

Mr. Rash explained the records provided in this case are a cumulative total of the annual outputs, not day-by-day. Other cases may differ.

Seeing no other questions from the Commission, Vice Chair King called for a representative from Hiskett & Sons to address the penalty. Sean and Steve Hiskett were present.

Sean Hiskett said they tried to be proactive but made a mistake by not following through appropriately. They hired Universal Engineering to assist with permit revisions to bring them back to compliance and have started the process of applying for a new permit.

Steve Hiskett added the numbers for the model were outdated and should have been updated.

Sean Hiskett noted their throughputs were set lower than what they should have been due to some mapping errors.

Vice Chair King asked if there were any questions for Hiskett & Sons.

Commissioner Goicoechea asked about the 70-day timeline in relation to getting a modified permit and whether, if they are issued a modified permit, the new permit can be retroactive or if they would be in violation until the new permit is issued.

Mr. Rash said officially, the new emissions limits do not go into effect until a new permit is issued; however, those situations can be considered on a case-by-case basis due to extenuating circumstances.

Vice Chair King opened the floor for additional comment. Seeing none, he brought the proceedings back to the Commission, explained the draft order within the provided documents with the Findings of Fact and Conclusion of Law, and then asked for a motion.

Motion: To approve the penalty for NOAV No. 3040 Hiskett & Sons Batch Plant for \$1,800 with the Findings of Fact and Conclusion of Law.

By: Commissioner Landreth

Second: Commissioner KC

Commissioner Sullivan thanked Hiskett & Sons for attending and stated NDEP closely followed procedure and that he will be supporting NDEP in the motion.

Commissioner Jenne told Hiskett he appreciated their honesty and understood their situation, and though it caught up to them, he is glad they are going through the process to apply for a new permit.

Vote: Motion passed unanimously

6) **Hiskett & Sons LLC Fallon Flattop Pit – NOAV No. 3043 (For Possible Action)**

Mr. Rash introduced the second penalty for Hiskett & Sons for a different facility (a flattop pit), with a Class II permit issued in 2018 and last revised in 2021 for their flattop pit. The permit requires no more than 6.5 hours of operation per day and no more than 150 tons of material to be processed per hour. The violation is the result of a review of operating records reviewed during an inspection conducted in December 2022. NDEP staff discovered poor record keeping and, for 132 days, all 11 systems operated beyond the maximum time allowed per day. The facility was cited for a lack of visible emissions observations, and a lack of record keeping and reporting. Both violations are minor administrative violations. However, the exceedance of 132 days for 11 systems is a major violation and results in more than 1,500 possible violations. The penalty matrix recommends a base penalty of \$600 for each instance of violation. Judgement and flexibility were used by NDEP staff, who took a facility-wide approach rather than looking at individual systems, to identify the number of instances when the theoretical maximum allowable daily emissions were exceeded. NDEP identified 13 such instances. Failure to operate in accordance with the conditions of the permit is \$600. This amount multiplied by 13 instances results in a total of \$7,800.

Vice Chair King asked if there were any questions from the Commission. Commissioner Reeder clarified that the permit is only good for six [and a half] hours per day.

Mr. Rash confirmed. The values included in the original permit application were modeled and did not pass. To allow operation, NDEP worked with the facility and issued a permit with hours of operation limited to six [and a half] per day. He also noted the results were not influenced by the nearby power plant, but solely by the facility's property boundary.

Commissioner Jenne asked, referring to the lack of records, if there was enough evidence to determine the number of days they were producing. He also wanted to know how they accounted for non-operating days.

Mr. Rash explained for the instances in question, there was enough evidence, and that the records provided were based on overall operation, not for each piece of equipment.

Commissioner Jenne followed up, asking if the cumulative total time of operation would give them a benefit on days that they exceeded six and a half hours.

Mr. Rash said no, NDEP did not apply an averaging period in this case. NDEP looked at what the emissions would be for total daily output and then compared it to the total daily operations. It averaged out hour by hour, but not day to day. Mr. Dragoni added the federal air quality standards for the criteria pollutant in question is a daily average, not hourly. NDEP could not average days when the hourly operations were exceeded with days of non-operation because by exceeding the number of hours they were permitted to operate in a day, the model shows them exceeding federal air quality standards.

Vice Chair King asked Mr. Dragoni if the amount is calculated per day and whether the regulation it is tied to demands this amount per day.

Mr. Dragoni said the federal air quality standard for this pollutant is defined as a daily concentration. NDEP models emissions on an hourly, daily, and annual basis and compares model results to the standard to back-calculate the number of hours a facility can operate and still meet the air quality standards. By accepting the permit, the company agrees to abide by the permit's hours of daily operation restriction.

Vice Chair King, with Commissioners Jenne, Goicoechea, Ghiglieri, and KC asked if any changes to the permit could be made to increase hours of operation, if NDEP used flexibility to calculate the penalty, and for clarification on the daily versus annual amount.

Mr. Dragoni and Mr. Rash answered yes, that NDEP used flexibility, and that the penalty could have been much higher. He also indicated that many parameters could be adjusted in the permit that may allow for extended hours of operation. Mr. Dragoni suggested that the facility speak to the permitting team and apply for a new permit with new parameters that may allow for extended hours. Mr. Dragoni and Mr. Rash clarified that although the previous fine was based on annual emissions, this fine is for daily emissions because the two permits are for different pollutants with different standards.

Vice Chair King asked for comments from Hiskett & Sons.

Steve Hiskett thanked the Commission for its understanding and again acknowledged facility complacency. He added Universal looked over the model and determined the problem could be fixed at the current location with 24 hours of operation and triple the throughput and still stay within permit limits if the boundary line was moved.

Sean Hiskett reiterated the boundary line for operations is what hinders them from meeting the current permit requirements.

Vice Chair King thanked the Hisketts for their comments, attendance, and for hiring Universal Engineering Services to aid in applying for a new permit.

Commissioner Jenne clarified that Hiskett thinks that if the boundary of the property changes, that will allow an increase in operation hours.

Steve Hiskett said LeGrande anticipates correcting the model inputs will solve the problem. However, if it still doesn't pass modeling, the boundary line can be moved to address the permit limits.

Commissioner Reeder asked if redefining the working area changes the model results.

Steve Hiskett said it would reduce emissions by 98%.

Mr. Dragoni provided a brief overview of the emissions model inputs and outputs and clarified NDEP looks at the emissions outside the boundary of the facility.

Commissioner Goicoechea asked if the Hiskett land is larger than initially defined by BLM.

Mr. Rash explained that NDEP model inputs are based solely on values provided by the facility.

Steve Hiskett confirmed their area of operations is larger now than when first evaluated. Sean Hiskett further noted the values provided to NDEP at the time of the original permit application were above and beyond what they could produce at that time, but that those values have changed.

Seeing no additional comments or further discussion by the Commission, Vice Chair King asked for a motion.

Motion: To approve the penalty for NOAV No. 3043 against Hiskett & Sons Batch Plant in the amount of \$7,800 including the Findings of Fact and Conclusions of Law in the decision.

By: Commissioner Goicoechea

Second: Commissioner Jenne

Vote: Motion passed unanimously

The meeting was recessed for a ten-minute break between 10:30 and 10:45 am.

7) **F & P Construction – NOAV No. 3044 (For Possible Action)**

Mr. Rash introduced NOAV 3044 for F & P Construction's Class II general permit and Change in Location Approvals (COLAs) for Temporary Construction Sources. The permit was issued in early 2023 after the events constituting the NOAV occurred. The general permit and COLA, which is a sub-permit of general permits, are for temporary sources and use of specific equipment at a specific location. NDEP responded to a claim of unpermitted equipment and found two stackers and two crushers operating without a permit. The base fine

for operating without a permit is \$1,000 per week of operation. This amount multiplied by four emission units results in a penalty of \$4,000.

Vice Chair King asked Mr. Rash where the one-week component of the fee calculation originated.

Mr. Rash explained the facility operated for one week without a permit. When they were told they needed a permit, the facility ceased operations.

When Commissioner King pointed out they could have been operating much longer without a permit, Mr. Rash stated the facility informed NDEP of when they started and terminated operations, claiming they operated for one week without a permit.

Commissioner Sullivan asked if this is F & P's entire operation or if the company maintains more facilities.

Mr. Rash noted this is the first issuance of a permit and COLA for F & P, and therefore an isolated event.

Commissioner Sullivan asked if the company has other emission units still operating in compliance with the permits or if the facility is shut down. Mr. Rash stated they were given a permit and to his knowledge are still operating.

Commissioner Goicoechea wanted to know if F & P had other permits.

Mr. Rash said not to his knowledge.

With no comment from F & P, public comment, or discussion by the Commission, Vice Chair King called for a motion.

Motion: To approve the penalty for NOAV No. 3044 against F & P Construction in the amount of \$4,000 along with the Findings of Fact and Conclusions of Law.

By: Commissioner Sullivan

Second: Commissioner Goicoechea

Vote: Motion passed unanimously

8) Trex Company, Inc. – NOAV No. 3049 (For Possible Action)

Mr. Dragoni introduced the fine. Trex operates in Fernley under a Class II permit issued in April 2021. NDEP found suspected equipment that was not permitted in March 2023. Trex ceased operations under that permit, resuming after the permit was revised in June 2023. The base penalty for operating equipment without a permit is \$3,000 per emission unit per month or per week. NDEP chose to pursue the fine for only one emission unit for 14 months for a total penalty of \$42,000. There were no further adjustments or stipulations within the fine calculation.

Commissioner Landreth asked what the basis was for choosing months over weeks to calculate the fine and if there is more than one unit.

Mr. Dragoni said 4 units were operating for 14 months, or 56 weeks, without a permit. NDEP exercised flexibility offered by the penalty matrix due to the facility being Class II because it felt using a monthly metric instead of weekly was more appropriate.

Mr. Rash explained NDEP's approach was to consider the equipment as one system to calculate the penalty rather than four separate facilities. Commissioner Landreth clarified the penalty is 1/8th the maximum it could have been and Trex is getting a large break.

Commissioner Landreth mentioned Trex is a publicly traded corporation and wanted to know, what, if any, explanation was given for the violation.

Mr. Rash stated NDEP held an enforcement conference with the company and Trex claimed a misinterpretation of the NAC. They believed since it wasn't a permitted installation, one was not needed.

Commissioner KC asked, without a place in the matrix to charge per piece of equipment, if it is considered a major violation because they were operating without a permit. She also sought clarity regarding the four times factor and would it be \$168,000 if NDEP had gone by weeks rather than months?

Mr. Rash stated under section B in the penalty calculation worksheet, there are numbered units.

Commissioner Goicoechea wanted information on the current permit, and whether it is issued for one or four units of equipment.

Mr. Rash answered both. There is an overarching umbrella and the system within it specifies what equipment falls under that system.

Commissioner Goicoechea then asked if, in the future, when one piece is out of compliance, can they be fined for one piece.

Mr. Rash answered yes.

Vice Chair King asked if the facility was operating under their misunderstanding of the NAC, were they tracking, testing, or recording the equipment they were being penalized for today, and have they provided any data.

Mr. Rash said yes, the company had been supplying NDEP with timelines for equipment installation, but not much else and there was no air quality standard to compare to.

Commissioner Sullivan recalled Commissioner Landreth's observations and wondered if adding a timeline of return to compliance to the worksheet would be possible.

Mr. Dragoni admitted the penalty matrix is imperfect and is used to start a discussion about what kind of penalty to propose. It provides flexibility to consider the permit class, how the facility responds to the NOAV, whether they acknowledged and corrected their mistake, or ignored the notice. All matrix considerations, albeit subjective, are considered.

Commissioner Sullivan accepted this explanation and noted Commissioner Landreth also mentioned that the size/type of facility could also be considered.

Mr. Dragoni acknowledged its viability to be included in the matrix. He noted NDEP is here to present their findings and considerations to the Commission and feels the fine is a fair violation suggestion to the Commission.

Seeing no comment from Trex or further discussion by the Commission, Vice Chair King asked for a motion.

Motion: To approve the recommended penalty for Trex Company NOAV No. 3049 for the proposed amount of \$42,000 including the Findings of Fact and Conclusions of Law.

By: Commissioner Sullivan

Second: Commissioner KC

Vote: Motion passed (Commissioner Landreth voted nay)

9) Reck Brothers – NOAV No. 2892 (For Possible Action)

Mr. Dragoni introduced the violation. The Reck Brothers Class II operating permit was first issued in 2014 and renewed in 2019. NDEP staff inspections resulted in several alleged violations for record keeping and monitoring. Those were considered minor violations and resolved with an administrative fine of \$1,700. Testing was supposed to be done two years before the inspection but was not conducted by the facility. In December 2021, an enforcement conference was held after the final NOAV issued in April 2020 when testing

had still not been conducted. In April 2022, NDEP issued an order to conduct testing of operating systems 3 and 3A to report for compliance with the permit within 90 days.

By August 2023, the facility had yet to comply and NDEP suspected that operations had continued throughout the process. Therefore, NDEP issued a conditional Stop Order insisting testing be performed before operations could continue. As of September 7, 2023, the facility has repeatedly evaded the mandate and continues to operate, producing asphalt regardless of the stop order's restrictions to cease production until testing can be conducted. NDEP has been working with the facility to try to mitigate the non-compliance and testing issue. Based on the penalty matrix, the base penalty for continued failure to test is \$600 per system, per pollutant, per month up to \$10,000. The NOAV is for 32 months times 2 systems and 6 pollutants, resulting in a total fine of \$38,400. With the cap of \$10,000 per system, the total is reduced to \$20,000. Additionally, failure to test initial opacity compliance demonstration (IOCD), with a penalty base of \$200 per system, per month, times 32 months per system is \$12,800. But due to the cap, that amount is reduced to \$4,000 per pollutant, for a total fine of \$24,000.

Vice Chair King opened the floor for questions from the Commission.

Commissioner Reeder questioned if the facility replied to the stop orders or had done anything to bring themselves back into compliance, and if the testing would be conducted by an outside source.

Mr. Dragoni reiterated the facility has yet to test, and yes, an outside source could conduct the testing.

Vice Chair King asked if the facility scheduled and rescheduled testing, why hasn't anything happened.

Mr. Dragoni said the question should be directed to the facility representatives present. However, NDEP has remained diligent in its attempts to work with them.

Seeing no further questions from the Commission, Vice Chair King moved on to comment from Reck Brothers.

Nathan Robertson, Reck Brothers construction manager, and Terry Reck, owner, provided in-person testimony with Tara Reck, Mr. Reck's daughter, presenting virtually.

Ms. Reck spoke of the longevity of Reck Brothers' operating in White Pine County for four decades and having never been fined for environmental infractions. They pride themselves on being a clean operation knowing the services they provide are crucial to Nevada's infrastructure. She noted the bigger issue involves testing. There are two different types of testing. First, the IOCD testing was resolved. Terry Reck was certified to conduct the test in Carson City and administered the test himself. The second test related to the serious infractions has not been done due to logistical challenges. Ms. Reck shared an email from Broadbent & Associates Inc. to support her assertions. Ms. Reck said that testing both plants will cost \$30,000. In addition, they would need to operate for 8-24 hours straight at 90% capacity to meet the testing conditions requirements. Ms. Reck explained records from August 6, 2021, show the maximum output for system 3 after 4 hours, at 75 tons per hour, doesn't meet the threshold of 90%, or 100 tons per hour. Ms. Reck provided several other examples demonstrating the facility is not operating near the threshold capacity to perform the testing. She also stated that forcing the plant to operate at that capacity would result in a large amount of waste material. The plants are permitted for significantly more tonnage than what is possible. Permits for a lower tonnage amount may correct the testing requirements. Ms. Reck further noted if they were to conduct the testing, they are unsure if a third-party representative from NDEP needs to be present. Reck Brothers was fined for 35 months. They believe operating only for 29 days in that period was not factored into the calculation of the fines and requested the recommended penalty be reduced.

Vice Chair King thanked Ms. Reck for her input and turned his questions to the other Reck Brothers representatives.

Terry Reck volunteered to answer the Commission's questions to ensure everyone understands the problem. He noted they rarely run their plants and the larger companies make more asphalt in one day than Reck

Brothers does in an entire season.

Nathan Robertson added that 99% of the time they are producing asphalt solely for their projects.

Mr. Reck continued, saying in 2002, they hired Broadbent & Associates, Inc. to perform the testing.

They plan to pave this weekend and are unsure if they will have a crew to solidify a date for testing to occur. He also said the test will produce approximately 300 tons and insisted they are not trying to circumvent the test. He knows what a huge benefit being permitted does for their business. It will take some planning to get everything in place.

Scott McNulty from Broadbent & Associates, Inc. emphasized Reck Brothers has been working with them to conduct the test, and a protocol has been established. However, they left it open-ended. Mr. McNulty also stated there is no way to complete the tests in the allotted time frame and scheduling two tests is cost prohibitive. He believes the fine is excessive.

Vice Chair King thanked Mr. McNulty and asked if there were any other questions from the Commission.

Commissioner Reeder asked Mr. McNulty if the 1,000 tons pumped out at \$115,000 cost is dumped on the ground to do the test, can it be decreased to one hour for testing rather than running for 25 hours.

Mr. McNulty said they are trying to find a large project to warrant around 70% capacity to do the test for 6 to 8 hours. They either have to wait until they get a large project or lower the test requirements.

Mr. Robertson added that NDEP staff has been great, and they acknowledge NDEP is restricted by the regulations that don't fit a company like Reck Brothers which services 1/5th of Nevada including State agencies. They provide a necessary service that would otherwise be unavailable.

Commissioner KC asked if it is 90% of the permitted operation or 90% of a standard set at the federal level and could the permit requirement be decreased.

Mr. Rash stated it is 90% of their permit throughputs. If they run at the maximum they are allowed, what will be emitted. He clarified that 100% is not required, but close to it.

Commissioner KC wanted to know if the permit could be amended to run less than that for the test to make it easier and more cost-effective.

Mr. Dragoni responded that the NDEP recognizes the technical challenge. Reck Brothers has been allowed to operate for two years without doing testing or contacting NDEP after receiving the first order to test. If they had contacted NDEP three or four years ago to advise that they were unable to test per the permit, NDEP would have done the same thing they are doing now: work with the company to find a solution and return them to compliance. The matter at hand dates to 2019 and the issuance of the first NOAV was 32 months later. In August 2023, NDEP issued another order to test in 90 days. It was then NDEP was contacted by the company. The NDEP is not looking at the recent failures to test, only the time stated in the first NOAV.

Vice Chair King asked if Reck Brothers received a permit amendment to lower the amount, would that solve the problem of testing?

Mr. Dragoni said they weren't sure, but it's a possible solution. However, the company never asked.

Mr. Robertson noted in the past two years, they changed their permitting consultant to Broadbent & Associates, Inc. to help address the issues. Regarding the permitting issues, originally the plants were permitted at their manufacturer's specifications. At their operating altitude, Reck would never reach the maximum, but that was not known. He agreed the permits may need to be adjusted to more realistic values, but the prior permitting consultant failed to notify them of that possibility.

Commissioner KC asked if the permit maximum is lowered, would that change the testing costs.

Mr. Robertson said it would address the issues with the test logistics, but not conducting the test. There is

still a problem with scheduling and running a project large enough to meet the requirements on the day of testing.

Commissioner Goicoechea noted his familiarity with Reck Brothers and Eureka County's reliance on the service they provide. If the company were to go away, it would have a huge impact. He was concerned that if the permitted output was lowered, and they were to have a large construction season, the facility may exceed their permit requirements again. Commissioner Goicoechea asked if there was an easier way to address the issue for these smaller operations.

Mr. Robertson clarified they can only run the plants at a certain output because of the elevation and will never be able to run at the permitted output.

Mr. McNulty added small plants have a limit of 150 tons per hour to get to the 90% threshold and it is a dangerous limit to reduce. Facilities are normally permitted at the rated capacity. If reduced, they would always run the risk of exceedance. In response to Commissioner KC's question, he stated the cost to conduct the test is fixed and doesn't change based on output.

Commissioner KC commented, with 40 years of production data, the facility should be able to get more appropriate numbers for permitting. She did not think there was a way in the matrix to consider a small business differently. She also noted the representatives mentioned operating 29 days out of the 32 months for which they are being fined. She wanted NDEP to elaborate on the days of operation rather than the months of operation, and if changing the fine or how it was assessed an option was discussed.

Mr. Rash stated this was viewed as a calendar-day offense.

Mr. Dragoni reminded the Commissioners of the administrative penalty for minor violations of spotty record keeping and monitoring, which made calculation of operating time difficult. NDEP discussed the compliance order with Mr. Reck and suggested he provide some kind of financial documentation showing their level of financial operation. NDEP did not receive any records.

Commissioner Ghiglieri asked if the records for the 29 days Reck Brothers operated were what NDEP received.

Mr. Rash answered he did not have the records on hand and could not verify.

With no further comment, Vice Chair King thanked and dismissed Reck Brothers representatives. He then asked Deputy Attorney General (DAG) Ziwei Zheng to confirm the Commission's responsibilities, clarify its involvement in examining penalties, and if it has the right to lower the penalty amount.

DAG Zheng said yes, the Commission can lower the amount of the penalty charged.

Commissioner KC noted she was unaware of a precedent of how to reduce the penalty and asked if there is a way to postpone the vote so NDEP can recalculate after substantiating days of operation.

Vice Chair King agreed to postpone the vote on the violation but was unsure how to refer the violation to NDEP for a re-assessment.

DAG Zheng suggested the Commission set a continuance so the item could be addressed at the next regulatory meeting.

Vice Chair King tabled the item for the next meeting and closed the comment period, allowing a motion from the Commission.

Motion: To table Reck Brothers NOAV No. 2892 until the next regulatory meeting scheduled for December 2023 and for NDEP staff to work with the facility to modify test requirements.

By: Commissioner Goicoechea

Second: Commissioner Reeder

Commissioner Ghiglieri pointed out the testing should have been done in 2019 and wanted to know what happened in the four years they were out of compliance. He agreed the motion should move forward and that a fine was still warranted due to the amount of time it has taken to come into compliance.

Vice Chair King admitted to having an issue with the amount of time it took to have the conversation between Reck Brothers and NDEP. He noted the possibility of another penalty for the infraction.

Vote: Motion passed (Commissioner Sullivan voted no)

10) PCC Structurals – NOAV Nos. 3045 and 3046 (For Possible Action)

Mr. Dragoni stated PCC Structurals holds a Class II air permit that was renewed in June 2022. In January 2023, when NDEP conducted an inspection, they discovered several noncompliance issues. The two main issues were failure to conduct the initial opacity compliance demonstration (IOCD) and initial testing for PM10 and PM2.5, which were to be completed 60 days after receiving their new permit in August 2022. For the IOCD testing, the base penalty for the violation is \$200 per month per system with a cap of \$2,000 per system. In this instance, the cap was not applicable. Therefore, five systems multiplied by four months brings the violation total to \$4,000. For the PM 2.5 and PM10 testing of three systems, the base is \$600 per system per month. Failure to conduct 2 tests on 3 systems for 4 months results in 24 instances. Twenty-four instances multiplied by \$600 per instance results in a penalty of \$14,400. The total amount for both violations is \$18,400.

Other violations included failure to maintain controls (grinders not connected to dust collectors), and several throughput exceedances which would have led to additional penalties of \$600 and \$6,000, respectively, had NDEP not foregone the violations because the grinders were only used occasionally, and PCC fixed the problems quickly. Record-keeping was also insufficient where the company claims employees incorrectly input the data. Although NDEP could not verify this, the second violation was a warning as well. NOAV Nos. 3045 and 3046 are for failures to test.

Seeing no questions from the Commissioners, Vice Chair King moved to comment from PCC Structurals.

Conor Butkus from Stoel Rives, representing PCC Structurals, and Brian McCampbell were present to address the Commission on behalf of PCC Structurals.

Mr. McCampbell stated PCC takes these violations seriously and wants to build a collaborative relationship with NDEP.

Mr. Butkus agreed, saying PCC takes the violation seriously and highlighted the great work the company has done to resolve all the violations. PCC has completed the work to come back into compliance with the IOCD and emissions testing and believes this warrants a reduced penalty. The warnings about the grinders were resolved a few weeks ago. The throughput exceedance was due to labor coding issues and resulted in erroneous throughput calculations. Workers were incorrectly inputting the time and it caused a calculation error. There is now a review process to mitigate these errors. He also said NDEP was helpful and great to work with. He requested the violation penalties be reduced because he did not understand how the penalties were calculated.

Vice Chair King thanked the PCC Structurals representatives and asked if the Commission had any questions.

Commissioner Reeder requested clarification on the labor coding and how it impeded the tests from being conducted within 60 days of issuance of the permit.

Mr. Butkus asserted the coding issue was for the throughput violation, not the testing violation, and the testing was conducted as soon as feasibly possible. The warning NOAV was related to the labor coding issue.

Commissioner Reeder reiterated the NOAV warning had been waived by NDEP staff.

Mr. Butkus acknowledged the fact and said workers are now manually checking timecards.

Seeing no other questions, Vice Chair King moved for a motion.

Motion: To approve penalties for NOAV Nos. 3045 and 3046 for PCC Structuralists totaling \$18,400, including the Findings of Fact and Conclusions of Law.

By: Commissioner KC

Second: Commissioner Jenne

Vote: Motion passed unanimously

Administrator's Briefing to the Commission

11) Discussion

NDEP Administrator, Jennifer Carr, noted in the nine months since the last meeting, personnel have changed. Ms. Carr said she was promoted to Administrator following Greg Lovato's departure in February 2023. James Settelmeyer was appointed Director of DCNR and Chad Stephens was named Deputy Director. Additionally, Danilo Dragoni was appointed Deputy Administrator. Two Bureau Chief vacancies will be filled internally this month.

She also said following the recent lift of the governmental freeze on all regulatory actions, the Commission will begin hearing regulation amendments and adoptions at the next meeting in December 2023. Two regulations related to anti-degradation and a fee increase for the Bureau of Safe Drinking Water's lab certification program were planned for January 2023 and will be among the upcoming regulations brought before the Commission.

The Governor's regulation freeze also mandated a review of all NDEP regulations. NDEP's final report contained over 200 pages of changes. The Legislative Council Bureau is beginning to review the resulting regulatory amendments.

There were several bills to note from the last legislative session. Assembly Bill (A.B.) 184, known as the Clean Trucks and Buses Incentive Program, establishes an incentive program for the purchase of certain zero-emission medium-duty and heavy-duty vehicles such as gas and diesel trucks and buses. It is a federally funded program and will be administered by NDEP and NDOT. Grant funds will be available beginning January 1, 2024.

To align state revolving funds with the allowances provided by federal acts such as the Safe Drinking Water Act and Clean Water Act, NDEP initiated amendments to A.B. 20. The revisions redefine *eligible recipients*, expanding those who can receive assistance. This permits NDEP to fund more projects for entities that have jurisdiction over more than sewage. For example, Truckee Meadows Water Authority will now be eligible for funding for forest treatment and restoration projects for runoff control around their reservoirs to protect drinking water quality.

Two other bills made various changes to the Open Meeting Law. The first, A.B. 219, prohibits public bodies from conducting meetings remotely unless call-in instructions are provided verbally before the first period of public comment or there is a physical location for the meeting where members of the public are permitted to attend and participate. In addition, if the meeting has a physical location, a copy of the notice or agenda must be posted at the public body's principal office or the location where the meeting is being held.

Assembly Bill 52 redefines quorum for a non-elected public body vacancy. It also stipulates the details related to the written notification required prior to any administrative action by a public body. However, this

excludes a gathering or series of gatherings of a public body if the members do not discuss or act on any business-related item.

Finally, A.B. 522, also known as the 2023 Pay Bill, provided a 12% pay raise for all state employees in July 2023. Another 11% will be applied to staff salaries on July 1, 2024. Ms. Carr hopes this will help reduce the vacancy rate. For reference, last spring, NDEP's vacancy rate was nearly 20%. Now it is at 15%, the lowest in 18 months. NDEP hopes to return to its 8% average vacancy rate. The Division has eliminated all forms of telework and is waiting to see the full effects of the Governor's return-to-work order. NDEP has lost only one employee due to the order.

NDEP has grown and will add 12 positions to the Division, bringing the total to 280 positions. New positions include support staff, IT staff, a supervisor in the Las Vegas office of the Bureau of Water Pollution Control, and reclamation positions for the Bureau of Mining. In addition, three positions were added to the Office of Financial Assistance in the interim, increasing the number of staff from five to eight, due to the increase in infrastructure funding.

The Bureau of Safe Drinking Water has created a position for an Environmental Scientist III position in the Las Vegas office to help with the new Per- and Polyfluoroalkyl Substances (PFAS) Rule from the EPA. Although national testing conducted indicates some states with PFAS chemical manufacturers are reporting PFAS, Nevada is seeing very few detections in drinking water or other bodies of water.

Vice Chair King wanted to know if there is enough room for employees in the Bryan Building. Ms. Carr said they continue to find space in corners to build cubes and NDEP is holding steady.

Commissioner Sullivan asked which two bureaus have Chief vacancies.

Ms. Carr said the Bureaus of Sustainable Materials Management, following the departure of Daren Winkelman who left to help run the Central Nevada Health District, and Air Quality Planning.

Public Comments

12) Public Comments

There were no public comments.

Adjournment

13) Adjournment

Vice Chair King asked for a motion to adjourn.

Motion: To adjourn at 12:41

By: Commissioner Jenne

Second: Commissioner Goicoechea

Vote: Motion passed unanimously

The audio recording of this meeting is available at https://sec.nv.gov/uploads/mtg_0923/Meeting-090723.mp3

ATTACHMENTS

ATTACHMENT 1: BAPC Reference Information

ATTACHMENT 2: SEC Penalty Recommendations Table September 2023

ATTACHMENT 3: Hiskett and Sons Batch Plant NOAV No. 3040

ATTACHMENT 4: Hiskett and Sons Flattop Pit NOAV No. 3043

ATTACHMENT 5: F & P Construction NOAV No. 3044

ATTACHMENT 6: Trex Company NOAV No. 3049

ATTACHMENT 7: Reck Brothers NOAV No. 2892

ATTACHMENT 8: PCC Structural NOAV Nos. 3045 and 3046