



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources

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

October 16, 2018

Don Tibbals
President
Gopher Construction, Inc.
1625 East Newlands Dr.
Fernley, Nevada 89408

RE: Notices of Alleged Air Quality Violation and Orders No. 2661 and No. 2662 for Class II Air Quality Operating Permit AP1442-1396.02 (FIN A0441)

Dear Mr. Tibbals:

The Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) alleges that Gopher Construction, Inc. (Gopher) has violated conditions of Class II Air Quality Operating Permit AP1442-1396.02 (Operating Permit).

The attached Notices of Alleged Air Quality Violation (NOAV) and Orders No. 2661 and No. 2662 allege that Gopher has failed to control fugitive dust and has failed to apply for a permit modification in order to operate the unpermitted equipment. For specific information regarding the alleged violations, please refer to the attached NOAV.

On September 20, 2018 the BAQP held an enforcement conference with Gopher to determine whether issuance of NOAV and Order Nos. 2661 and 2662 were or were not warranted. Based on the information provided by Gopher, the BAQP has determined that formal issuance of NOAV Nos. 2661 and 2662 is warranted.

Administrative penalties for minor violations are set by regulation, not by the State Environmental Commission (SEC). **The according to NAC 445B.28, the first fugitive dust violation is a minor violation and the administrative penalty for NOAV No. 2662 is \$500.00.**

The specified fine must be submitted to the SEC within ten (10) days of NOAV No. 2662 being received. Instructions for paying fines are as follows:

NAC 445B.283 Violations: Manner of paying fines. (NRS 445B.201, 445B.640) states:

“1. The amount of the specified fine, in accordance with the schedule of fines for minor violations, must be submitted within 10 days after service of the notice upon the violator.

2. Cashier’s checks, certified checks, money orders or personal checks must be made payable to the State of Nevada and must be sent to the State Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.”

As was discussed during the enforcement conference, the BAQP makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for major air quality violations. **The BAQP will be recommending a penalty of \$8,000.00, for NOAV No. 2661 based on use of the Administrative Penalty Matrix for air quality violations.** The open to public SEC hearing will be held at the Nevada Legislative Building, Room 2135, located at 401 South Carson Street on **December 12, 2018 at 9:30am.**

If you have any questions regarding the alleged violation or the enforcement conference, please contact Andrew Tucker by phone at (775) 687-9499, or by email at atucker@ndep.nv.gov. If he is unavailable, please contact me by phone at (775) 687-9335, or by email at rwhited@ndep.nv.gov.

Sincerely,



Robert Whited
Supervisor, Enforcement Branch
Bureau of Air Quality Planning

REW/ajt

enc.: 1.) Notice of Alleged Air Quality Violation and Orders No. 2661 and No. 2662
2.) SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC
Storey County Board of Commissioners
FIN A0441 (Certified Copy)

E-Copy: Danilo Dragoni, Ph.D., Chief, BAQP
Lisa Kremer, P.E., Chief, BAPC
Ashley Taylor, P.E., GISP, Supervisor, BAPC
Keri Foster, P.E., Supervisor, BAPC
Nathan Carrasco, BAPC
Andrew Tucker, BAQP

Certified Mail No.: 9171 9690 0935 0041 1154 63

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. 2661

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Don Tibbals, President

Company Name: Gopher Construction, Inc.

Address: 1625 East Newlands Dr., Fernley, Nevada 89408

Permit Number: AP1442-1396.02 **FIN:** A0441

Site of Alleged Violation: Off Waltham Way towards Peru which will lead to facility pit

Date of Observation: 11/03/2017 **Arrival:** 2:30 PM **Departure:** 2:45 PM

Ambient Temperature: 60 °F **Clear:** X **Cloudy:** **Rain:** **Snow:**

Wind Speed: Varied mph **Wind Direction:** Varied

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:

- (d) Commencing construction or modification of a stationary source without applying for and receiving an operating permit or a modification of an operating permit as required by NAC 445B.001 to 445B.3497, inclusive, or a mercury operating permit to construct as required by NAC 445B.3611 to 445B.3689, inclusive;

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

Failure to apply for a permit modification in order to operate unpermitted equipment.

Evidence:

Gopher Construction, Inc. (Gopher) operates gravel plant facility under the requirements of Class II Air Quality Operating Permit (AQOP) AP1442-1396.02 issued May 29, 2014.

The BAPC visited Gopher's facility again on Friday, November 3, 2017 to perform a full compliance inspection. During the inspection, the BAPC discovered several pieces of unpermitted equipment: crushers, screen, hoppers, and conveyors at the facility.

On September 20, 2018 the Nevada Division of Environmental Protection - Bureau of Air Quality Planning (BAQP) held an enforcement conference with Gopher to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2661 was or was not warranted. Based on the information provided by Gopher, the BAQP has determined that formal issuance of NOAV No. 2661 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, operating unpermitted equipment constitutes a major violation. This Notice of Alleged Air Quality Violation (NOAV) and Order in conjunction with NOAV No. 2662 issued under the same cover, represents Gopher's first 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: Ensure all equipment is properly permitted prior to operation.

_____ 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.

To pay the penalty amount assessed by the State Environmental Commission.

Signature 
Issued by: Robert Whited
Supervisor, Enforcement Branch
Bureau of Air Pollution Control

Phone: 775-687-9335 Date: October 16, 2018

RW/ajt

Certified Mail No.: 9171 9690 0935 0041 1154 63

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

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. 2662

NOTICE OF ALLEGED AIR QUALITY VIOLATION

Person(s) to Whom Served: Mr. Don Tibbals, President
Company Name: Gopher Construction, Inc.
Address: 1625 East Newlands Dr., Fernley, Nevada 89408
Permit Number: AP1442-1396.02 **FIN:** A0441

Site of Alleged Violation: Off Waltham Way towards Peru which will lead to facility pit
Date of Observation: 11/03/2017 **Arrival:** 2:30 PM **Departure:** 2:45 PM
Ambient Temperature: 60 °F **Clear:** X **Cloudy:** **Rain:** **Snow:**
Wind Speed: Varied mph **Wind Direction:** Varied

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

Nevada Administrative Code (NAC) 445B.22037 Emissions of particulate matter: Fugitive dust.

1. No person may cause or permit the handling, transporting or storing of any material in a manner which allows or may allow controllable particulate matter to become airborne.
2. Except as otherwise provided in subsection 4, no person may cause or permit the construction, repair, demolition, or use of unpaved or untreated areas without first putting into effect an ongoing program using the best practical methods to prevent particulate matter from becoming airborne. As used in this subsection, "best practical methods" includes, but is not limited to, paving, chemical stabilization, watering, phased construction and revegetation.

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

Failure to control fugitive dust.

Evidence:

Gopher Construction, Inc. (Gopher) operates gravel plant facility under the requirements of Class II Air Quality Operating Permit (AQOP) AP1442-1396.02 issued May 29, 2014.

On November 3, 2017 the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) observed excessive fugitive dust emissions at Gopher's facility at their western side haul truck road. Fugitive dust must be controlled at all times as required by *Section VII* of the AQOP.

On September 20, 2018 the Nevada Division of Environmental Protection - Bureau of Air Quality Planning (BAQP) held an enforcement conference with Gopher to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2662 was or was not warranted. Based on the information provided by Gopher, the BAQP has determined that formal issuance of NOAV No. 2662 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, failure to control fugitive dust constitutes a minor violation. This Notice of Alleged Air Quality Violation (NOAV) and Order in conjunction with NOAV No. 2661 issued under the same cover, represents Gopher's first air quality violation within the last 60 months.



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

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

FORM 3: FORM FOR REQUESTING AN APPEAL HEARING

(Provide attachments as needed)

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

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

Signature: _____

Representative capacity (if applicable): _____

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

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

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

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

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

Date of Request: _____.

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