





# NEVADA STATE ENVIRONMENTAL COMMISSION

## Meeting Minutes

 <b>TIME</b> December 12, 2018 9:30 A.M.	 <b>LOCATION</b> Nevada Laxalt Building, Second Floor 401 N. Carson Street Carson City, NV
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### SEC Members Present and Absent

#### Present:

E. Jim Gans, chair  
Tom Porta, vice chair  
Kathryn Landreth  
Kacey KC  
Jason King  
Rich Perry  
Mark Turner  
Cary Richardson

#### Members Absent:

Tony Wasley

### SEC Staff Present

Henna Rasul, SEC/DAG  
Valerie King, executive secretary  
Shanon Pascual, recording secretary

### Members of the Public Present

Tim Dyhr, Nevada Copper  
Allen Biaggi, NV Mining Association  
Cliff Lawson, NDOT  
Ian Bigley, PLAN  
Scott Jolcover, Comstock Mining  
Don Tibbals, Gopher Construction  
Brenda Pohlmann, City of Henderson, NV  
Tony Dimpel, McGinley & Associates  
Debra Struhsacker, Mining Consultant  
Beverly Harry, Plan Action

### NDEP Staff Present

Bob Whited  
Andrew Tucker  
Erik Ringle  
Greg Lovato  
Jason B. Cooper  
Danilo Dragoni  
Rob Foerster  
Tom Gray  
Jeff Kinder

## Begin summary minutes

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

The meeting was called to order at 9:30 a.m. by Chair Jim Gans. Executive Secretary Valerie King confirmed that the hearing was properly noticed and that a quorum was present.

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### 2) Public comments (Discussion)

There were no public comments.

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### 3) Approval of minutes — June 27, 2018, SEC meeting (Action item)

Chair Gans addressed corrections to the June meeting minutes.

**Motion:** Commissioner Perry moved to approve the minutes. Commissioner Landreth seconded the motion, and it passed unanimously.

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## Air penalties

Mr. Jeff Kinder, deputy administrator for the Nevada Division of Environmental Protection (NDEP), gave a brief update on NDEP air compliance and enforcement programs. The air program consists of the Bureau of Air Pollution Control and the Bureau of Air Quality Planning. There are 12 branches, four of which have a compliance and enforcement function. For efficiency, all enforcement branches have been consolidated into a single Enforcement Branch, housed in BAQP. One of the main reasons for this change is to increase compliance by proactively pursuing solutions with facilities before the enforcement route is taken.

### 4) Cemex Construction Materials Pacific, LLC — Notice of alleged violation No. 2660 (Attachment 1) (Action item)

► *Bureau of Air Quality Planning (BAQP)*

Before presenting the proposed penalty, Dr. Danilo Dragoni, bureau chief of BAQP, gave an overview of the air quality standards that are in effect in the area, which is east of Sparks along the I-80 corridor near the Tahoe-Reno Industrial Center (covering parts of both Washoe and Storey counties). Dr. Dragoni stated that the Clean Air Act gave the U.S. Environmental Protection Agency the authority to create National Ambient Air Quality Standards (pollution concentrations that cannot be exceeded at any time, in any area, regardless of the condition of services). Each facility in an area consumes a portion of this air commodity, and no other air quality permits can be issued unless more of the commodity becomes available. Dr. Dragoni provided a map (Attachment 2) showing how much of the PM<sub>10</sub> (particulate matter that is 10 micrometers or less in diameter) air commodity has already been allocated in the area east of Sparks (up to 90-95% has been allocated).

Commissioner Richardson asked if the majority of the theoretically available PM<sub>10</sub> was absorbed by a power plant in the area. Referring to the map, Dr. Dragoni replied that, while the power plant is consuming a portion of available air credits, aggregate processing operations in the near produce more PM<sub>10</sub> than the power plant.

Vice Chair Porta asked if the base adjustments for all three air penalties were related to the location of the attainment areas and asked for details during each air penalty presentation. Dr. Dragoni replied that the adjustments were not related to the location, explaining that due process for violations and penalties had nothing to do with the air quality situation, but with how the standard is maintained for the area. He noted that the violation is being pursued in the same manner as other violations in the past.

Dr. Dragoni explained that Cemex Construction Materials, LLC operates an aggregate processing plant under a Class II Air Quality Operating Permit, with a facility located east of Sparks, south of I-80. On November 1, 2017, NDEP compliance staff conducted a site inspection and observed 14 emission units operating without air pollution controls as required by the permit, which included water spray to abate PM<sub>10</sub> emissions. Dr. Dragoni noted that some of the fogging spray had not been maintained as evidenced by water damage in the lines. A conference was held on September 20, 2018, during which the reasons for the alleged violation were explained. The facility did not dispute the alleged violation.

Mr. Robert Whited, supervisor of the BAQP Enforcement Branch, went over the penalty matrix for the proposed base penalty.

No representative for Cemex was present, and no one in attendance wanted to be heard on the matter.

**Motion:** Commissioner Perry moved to approve NOAV 2660 for \$8,400.00. Commissioner King seconded the motion, and it passed unanimously.

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## 5) Joy Engineering — Notice of alleged violation No. 2643 (Attachment 3) (Action item)

► *Bureau of Air Quality Planning (BAQP)*

Dr. Danilo Dragoni, bureau chief of BAQP, presented the proposed penalty to the commission. Joy Engineering operates an aggregate processing plant under a Class II general permit associated with a change of location approval (COLA) permit. It is located east of Sparks and south of I-80 in Storey County. On April 5, 2018, NDEP compliance staff conducted a site inspection and found that Joy Engineering had been operating five days after their COLA expired. During the enforcement conference on April 13, 2018, Joy Engineering stated that they mistakenly thought the COLA became effective on the date operations began rather than the date of the permit's release. Joy Engineering requested an extension in order to complete the current job, so NDEP issued a compliance order to allow operations until May 1, 2018. Dr. Dragoni added that both parties agreed that the violation was necessary.

Commissioner Richardson asked to be recused since he has an ownership interest in a construction firm that conducts business with Joy Engineering.

Commissioner Landreth asked if the facility was shut down permanently, and Dr. Dragoni stated that the company would apply for a COLA each time it located or relocated operations.

Chair Gans asked for clarification on the operation period. Dr. Dragoni confirmed that Joy Engineering had operated five days out of compliance and ten days in compliance.

Executive Secretary King interjected that Joy Engineering stated that they would accept the penalty but would not be present.

Mr. Robert Whited, supervisor of the BAQP Enforcement Branch, reviewed the matrix of the proposed penalty. He noted that the company had no prior enforcement history so there were no multipliers involved, bringing the total to \$2,900.

Dr. Dragoni clarified that, for the COLA in question, Joy Engineering was not re-permitted. Instead, NDEP issued a compliance order that allowed them to work for the following ten days. The plant has since been moved, and another COLA is now in place at a different location.

Dr. Dragoni then stated that there had been no permits or COLAs denied for Joy Engineering to date. Returning to the topic of air commodity consumption in the area, he said that NDEP was reviewing old permits to prevent air quality thresholds from being exceeded, with a goal to allow operations in the area.

Commissioner Richardson commented on the risk that companies assume when relocating to the area, noting the importance of getting the word out on the air commodity situation to avoid surprises. He emphasized the value of encouraging companies to partner with NDEP or the University of Nevada, Reno when relocating.

**Motion:** Commissioner King moved to approve NOAV 2643 for \$2,900.00. Commissioner KC seconded the motion, and it passed 7-0 (with Commissioner Richardson abstaining).

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## **6) Gopher Construction, Inc. — Notice of alleged violation No. 2661 (Attachment 4)** (Action item)

► *Bureau of Air Quality Planning (BAQP)*

Dr. Danilo Dragoni, bureau chief of BAQP, presented the proposed penalty to the commission. Gopher Construction operated an aggregate processing plant under a Class II Air Quality Permit and was located east of Sparks and south of I-80 in Storey County. On November 3, 2017, compliance staff conducted a site inspection and discovered that a mobile crushing and screening plant had been brought onsite and was operating, but it was not part of the permitted equipment. During a conference on September 20, 2018, BAQP staff was told that the equipment had been operating for approximately two weeks. Based on this information, NDEP had issued a final NOAV for \$8,000. Dr. Dragoni noted on the side that a minor violation — No. 2660 (not on the agenda for discussion or action) — had also been provided for fugitive dust, which carries an admissibility penalty of \$500. He clarified that the violation in discussion at the meeting was only for No. 2661.

Mr. Robert Whited, supervisor of the BAQP Enforcement Branch, went over the matrix of the proposed penalty, explaining that the company had no prior compliance history. He noted that a permit revision could have allowed Gopher Construction to keep operating the equipment on-site if it had been approved by NDEP.

Chair Gans asked for more detail on the economic benefit portion of the penalty matrix. Mr. Whited replied that Gopher Construction had avoided the cost of a permit revision (\$2,000) to bring the equipment on-site, which would have required them to bring a model to BAQP that proved they could operate the equipment without exceeding air quality standards.

Dr. Dragoni explained that it takes around 70 days to revise a permit, but added that NDEP often considers issuing a COLA to help companies meet tight timelines without damaging air quality — a four-day process.

Mr. Don Tibbals spoke on behalf of Gopher Construction, noting that the crusher had gone down on a Friday. Since a mechanic could not come on-site for a few days, he made a call to bring in a portable crusher in order to finish the job and avoid a penalty from the customer. He added that the company had been penalized in any case, as they did not get the job done in time. He stated that he had been negligent in not getting a permit, but said the 70-day delay to modify his permit would have taken too

long. He noted that there were no more emissions other than those already planned at the intermittent plant. He said that once the crusher went down and the other belts were moved over, he had not seen the matter as negligent.

Commissioner Turner asked if Mr. Tibbals had been aware of the possibility of a work-around by contacting NDEP. Mr. Tibbals responded that he did not think he was doing anything wrong by swapping crushers.

Chair Gans asked if NDEP staff worked with Mr. Tibbals. Mr. Tibbals affirmed that NDEP had worked with him by making the penalty as fair as possible.

Chair Gans asked Mr. Tibbals what he wanted the commission to consider. Mr. Tibbals responded that it had been a bad job from the beginning, but understood that Mr. Whited was doing his job just as his company was also doing its job.

Chair Gans asked NDEP if Gopher Construction disputed the findings in the initial meeting. Mr. Whited stated that there had been no dispute during the initial meeting. Mr. Tibbals had acknowledged the issue, and NDEP had tried to be as fair as possible. Mr. Whited stated that he explained to Mr. Tibbals at the meeting that if he had called in, NDEP would have worked with him; however, Mr. Tibbals did not know that at the time. Mr. Whited continued, stating that NDEP was always open to people calling and asking how to resolve issues. He added that he felt NDEP had been extremely fair in the situation, using the lesser matrix to calculate the fine.

At a commissioner's question, Mr. Tibbals responded that the job had been for a subcontractor for the State of Nevada.

**Motion:** Vice Chair Porta moved to approve NOAV 2661 for \$8,000, and he commended Mr. Tibbals for his honesty. Commissioner Landreth seconded the motion, and it passed unanimously.

Chair Gans also commended Mr. Tibbals for his honesty, and explained that it appeared that NDEP staff had already been as helpful as they could be within their parameters on this issue.

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## Permanent regulatory petitions

### 7) Permanent regulatory petition – R186-18 (Attachment 5) (Action item)

► *Multiple NDEP Bureaus*

Chair Gans began by explaining his reasons for bringing the petition back in front of the SEC: for internal consistency within NDEP and to attend to Commissioner Landreth's motion at the last SEC meeting, which asked for further analysis. Chair Gans said that he later approached Mr. Greg Lovato and let him know that he was uncomfortable with the situation and asked for further analysis.

Commissioner Richardson stated that he agreed with Chair Gans, but felt the petition was a precedent-setting change in policy that required more than a week for a thorough decision. He recommended that the matter be changed to a non-action item. Commissioner Landreth concurred.

Ms. Rasul noted that the agenda could not be changed, so the item could not be changed to a non-action item; however, the commission could agree to take no action.

Chair Gans stated he would like to hear Mr. Lovato's presentation before deciding whether or not to take action.

NDEP Administrator Greg Lovato stated that the proposed changes under R186-18 would unify how NDEP provides public notice. He noted that the proposal emerges out the experience of NDEP's air programs after a similar temporary regulation was passed by the SEC in May 2017 and made permanent in September 2017.

Mr. Lovato acknowledged concerns with the proposal, but said that, given the ever-increasing reach and scope of the internet, the question is not *if* but *when* NDEP will no longer be required to publish public notices in newspapers.

Mr. Lovato then outlined NDEP's position in a PowerPoint presentation (listed by slide) **(Attachment 6)**:

1. The proposal and other planned actions strike the right balance between the effective use of public resources and statutory requirements to inform the public of proposed decisions and provide the opportunity to comment.
2. The presentation covered the purpose of the proposed amendments and dynamic context of public noticing that NDEP operates within; the measures that NDEP intends to take; and how the change has been progressing in the air program.
3. Experience indicates that the requirement to publish public notices in newspapers has not yielded a good return on NDEP's investment of public funds and hours. It also creates unnecessary delays for projects. Since many regulatory programs are delegated from the U.S. Environmental Protection Agency (EPA), NDEP cannot be less stringent, so the proposed regulation was carefully crafted to allow notice on websites only when permitted by federal law and regulation.
4. Across administrations, EPA is moving in the direction of allowing the posting of public notices on websites in lieu of newspapers, specifically for their air and water programs.
5. NDEP researched agencies in other western states to measure their proposed approach to public notices. Although many agencies have an interest in moving away from newspaper notices, pushback from press organizations and concerns about internet access in rural communities has delayed such a change. Arizona reported that this has been brought to the legislature the past three sessions without success, and their proposal was for all public notices in the state, not just the Arizona Department of Environmental Quality. While it is helpful to be aware of what other states are doing, Nevada is not a follower and can break new ground.
6. NDEP researched the requirements of other Nevada agencies, finding that newspaper notices are required for some Nevada Department of Wildlife (NDOW) and Nevada Division of Water (NDWR) Resources decisions; however, these are very different from a proposed NDEP permit decision, since NDOW and NDWR confer property or license rights, whereas NDEP permits do not. The Nevada Division of Minerals has no requirements to notice permit decisions in newspapers related to oil and gas, geothermal resources, or dissolved mineral resources.
7. NDEP permit decisions are taking place largely after the public has become aware of projects through other means.
8. NDEP researched the effectiveness of current regulations by determining the audience of public notices and the cost to publish them, estimating that printed newspapers reach 20-22% of households in Nevada. Moreover, the frequency of print publication and circulation is declining. In this way, the cost to publish notices is shifted to the public and industry.
9. Over two years, NDEP's noticing programs cost \$90,000 and over 250 hours of staff time. During this time, NDEP staff only received one letter that was prompted by a newspaper notice, but

even this response was not related to the topic. This underscores the fiscal inefficiency of the program. Staff time and NDEP resources can be better used to improve access to electronic documents and public records, areas where NDEP is seeing increasing demands.

10. The rule would apply to every NDEP program that is required to publish notices in newspapers (except for permits for water discharges that fall under certain federal programs). Notices on water infrastructure financing often list eligible projects for funding or assess the environmental effects of a project prior to its construction (under the National Environmental Policy Act, or NEPA). A letter of support for these changes has been received from Bob Foerster, Executive Director of the Nevada Rural Water Association.
11. The changes to the regulation would allow NDEP to notice proposed permit decisions and updates on infrastructure financing on NDEP's website instead of newspapers, increasing NDEP's efficiency and effectiveness and reducing a burden on the regulated community due to uncertainty and delays associated with newspaper public noticing.
12. Aware of concerns about citizens who may not use or may not have regular access to the internet, NDEP studied internet access across Nevada, which showed that combined mobile and broadband access for all counties is above 90%, except three of them (including Lincoln County). Moreover, broadband access is not needed to access NDEP public notices, which are not multimedia.
13. Critics of the proposed change have flagged due process litigation and proof of process publication or after-the-fact alterations as a concern. While Nevada may be challenged for not providing proper notice to interested parties, NDEP is protected largely because of the legal review from the Legislative Council Bureau and approval from the Legislative Commission (already given for new noticing requirements for NDEP's air program) and the fact that noticing of regulatory petitions in newspapers is not required by the Nevada Administrative Procedure Act. Having a consistent process across NDEP would also produce a better defense against such challenges. By keeping copies of original public notices and emails from NDEP to local media outlets in the administrative record, NDEP can also address concerns that the date of internet public notices are subject to manipulation or even after-the-fact alteration.
14. To get feedback from the public on the proposed regulatory change, NDEP held one workshop on Nov 1, 2018, using the Nevada System of Higher Education videoconferencing network, which was broadcast to ten locations. 13 individuals attended, representing 11 organizations.
15. At the workshop, NDEP received verbal support for the proposed changes from representatives from the Nevada Mining Association, Nevada Rural Water Association, and Southern Nevada Health District. Before bringing the proposed change to the SEC in June 2018 (which did not pass the SEC), NDEP's mining program also held three, in-person workshops in Tonopah, Winnemucca, and Elko, with a combined attendance of 40. No negative comments were received at these workshops.
16. Procedures and practices for effectively executing the changes in public noticing would be included in NDEP's Division Administrative Manual. Some of these practices would include:
  - a. Including most recent notices on the NDEP home page
  - b. A full database of active public notices — searchable by program and location — on a single webpage that has prominent links both on the NDEP home page and all other pages.

- c. Easy access to supplementary information, including links to any permit fact sheets or project information
  - d. Resources that are readable and comply with the Americans with Disabilities Act.
17. NDEP maintains mass email lists as an additional noticing measure. At the last count, the mining program email list has 255 email addresses; the water pollution control program list has 180; and air program is moving from a hard copy mailing list to an email list. It's easy to subscribe to these lists through links on each NDEP webpage and prompts provided by every program. Moreover, a NDEP public information officer will issue a press release to area media for every public notice, a practice that has already been established with the air program.
  18. Features of NDEP's website were reviewed.
  19. All notices will be provided to county commissions either through email or hard copy, depending on their preferences. Direct mail lists will also be maintained for those who wish to be notified via US mail.
  20. On Nov 20, 2018, NDEP received a letter from Elko County Association of Realtors President Marcella Syme, who requested that this program be phased in over a long enough period. Staff contacted their public affairs chair, Paul Bottari, who agreed that providing notices over a six-month period would be acceptable. NDEP plans to continue posting notices on a semi-annual basis, with a reminder of how to access public NDEP notices on the website, email listserv, or direct mail.
  21. In the two years since NDEP's air program stopped noticing in newspapers, NDEP noticed 104 permitting actions via the newspaper and received no correspondence in response to those notices. Because of public interest, the air program published one public notice in the newspaper. NDEP will also publish notices in newspapers that relate to two facilities that have a notable compliance history.
  22. Because of the proposed changes, the air program has saved over \$30,000 since May 2017. The air program — along with the mining bureau — is also one of the lead bureaus making strides in digitizing public records to increase accessibility. The changes in public noticing are not just about cost savings but also about reinvesting limited resources into more productive work. It is also important that staff and the public realize that leaders are keeping up with the changing times and are always looking to improve and innovate.

During the presentation, Commissioner Richardson asked if the costs for internet advertising would be factored into permit fees, and Mr. Lovato stated that they would. However, NDEP would not lower fees, but rather free up funds to re-invest in other division requirements.

After finishing the presentation, Mr. Lovato introduced Brad Crowell, director of the Nevada Department of Conservation and Natural Resources, who encouraged the SEC to vote yes on the proposed changes. He reaffirmed that the EPA is on the cusp of making similar changes, noting that if the federal government is ahead of Nevada on this, then Nevada is already behind. Mr. Crowell stated that putting the fees back into the program would help offset costs and that the model is well thought out, with support from rural communities. He summarized that the public notice process is becoming more streamlined, not being circumvented.

Commissioner Perry asked what percentage of permits and renewals were NEPA actions or had already been posted and gone through a federal government (like the Bureau of Land Management or Forest



Service) action. Mr. Joe Sawyer, bureau chief of NDEP's mining bureau, responded that it is a high number, probably close to 90%, since very few mining projects are only on private land.

Commissioner Perry stated that once a NEPA action is in place, there is a parallel process through the federal government, which is not required to do a newspaper publication. He stated that he was in favor of the proposed changes for this reason and because it would streamline and make the process of permitting more efficient.

Commissioner KC thanked NDEP for the presentation, stating that it was useful to see how noticing worked in the air program. She felt that this had given the SEC ample time to evaluate the information and make a determination.

Stating that Commissioner King's previous vote against the issue had swayed his position, Chair Gans asked for Commissioner King's input. Commissioner King commented that he had been concerned that the program was not being implemented across the board, but he was in favor of the move. He echoed Commissioner Perry and Commissioner KC's thoughts. He said that people who do not have internet access or do not want to look at publications on the internet could have the information mailed to them.

Chair Gans said that it was important that each commissioner clarify his or her position during each meeting since they cannot discuss issues outside of meetings. He said that it was important to decrease bureaucracy whenever possible. He added that NDEP must keep up with current communication methods and keep its programs on the same page. He commended Mr. Lovato on his thorough report.

Commissioner Turner echoed previous comments by the other commissioners, emphasizing that newsprint is a shrinking medium worldwide and more people use electronic media to gather information on the world around them. He also noted that errors in a notice are easier to correct in electronic media than newsprint. He asked for feedback from Commissioner Richardson.

Commissioner Richardson stated the importance of a notified public and erring on the side of ample notification, adding that a holistic approach should be taken that includes both print and digital mediums. He recommended that e-noticing proceed as recommended but also be supplemented with newspaper advertising — for informational purposes only — that directs the public to the website.

Referencing Mr. Tibbals earlier comments on the challenges of permitting delays on business, Vice Chair Porta stated that he was in favor of streamlining permitting to encourage businesses to make decisions that adhere to their permit agreements.

Commissioner Landreth agreed with Commissioner Richardson on the importance of having a transitional period with the requirement of still posting in the newspaper while moving to e-notices. She thanked Mr. Lovato for his presentation, but added that she could not support anything that would remove newspaper posting at this time. She added that, in rural areas, newspapers are still used for information and that agency discretion should not be used to determine when a print publication is warranted. She said that, in Texas, the Environmental Defense Fund, Freedom of Information, League of Women Voters, LULAC (a Hispanic organization), Public Citizen, the NAACP, Press Association, and Society of Architects were in opposition to e-noticing. She added that if more people knew about this proposal, more would have attended to make comments. She regretted having missed the commission meeting at which the vote was made to allow e-noticing for the air bureaus and wished that Commissioners Conrad and Wasley were present to weigh in.

Chair Gans asked for public comments.

Mr. Allen Biaggi, representative of the Nevada Mining Association, began by offering condolences at the death of Fred Wright, the past wildlife representative of the SEC. He then briefly introduced the NV

Mining Association, stating that it provides a voice in federal and local policy matters, community engagement, public education, and workforce development. He said that the association strongly supports the proposed regulatory changes as well as an open and transparent process. Mr. Biaggi applauded NDEP for moving forward with the requirements and acknowledging the way people received information, especially communities in rural Nevada. He explained that online information is replacing printed newspapers today, arguing that news, information, and notices to the public could be provided more cheaply and effectively through online notification, websites, and email. Mr. Biaggi stated that in 1979, when he began a long tenure as an employee of NDEP before he changed jobs in 2010, newspapers were very important. But he said that times have changed, and he would still take the position of Mr. Lovato on the matter if he were the administrator of NDEP.

Ms. Beverly Harry, representing the Progressive Leadership Alliance of Nevada Action Fund, stated that NDEP is responsible for considering those that they are serving and that NDEP should not be considering limiting notice to the public. Instead, every material at the public's disposal should be used to stay in tune with rural communities that lack internet access. She cited unreliable internet along I-80, I-15, the northern and southern areas of Highway 93, and north of I-95. In order to provide reliable notification, she added, NDEP would have to get internet companies to provide a full map of coverage areas. She also said that tribal communities in Nevada had issues being notified from NDEP. She suggested that public notices should be at the front of the newspaper, noting the importance of getting the public's eye and making optimal communication.

Mr. Ian Bigley, mining justice organizer for the Progressive Leadership Alliance of Nevada, thanked Commissioners Landreth and Richardson on their insightful proposal on keeping citizens engaged. He acknowledged the ongoing shift toward digital media, but argued that Nevada was not there yet, pointing to an article in the Elko Daily Free Press on improving the internet connection in Nevada, where 13 of 14 counties are cited as needing assistance with consistent internet access. The article also states that there is no wired access for over 100,000 people, with 2,200 people below the 25 megabytes per second standard. Mr. Bigley acknowledged access to mobile data but said relying on it represents the externalization of costs by making the public pay for data. Mr. Bigley said that the success of public noticing shouldn't be measured by the number of response letters, but by the availability of information. He closed by suggesting a three to five year evaluation schedule in order to move forward with the proposed change.

Mr. Bob Foerster, executive director of the Nevada Rural Water Association, encouraged the commission to move forward on the proposal, stating that the proposed changes to public notices would improve communications. He commended Mr. Lovato for his presentation. He cited efforts by the National Rural Water Association to change federal rules on noticing consumer confidence reports to allow several modes of communication including the internet and to make the internet the primary means of communication, with other supplementary means like direct mailing.

Mr. Scott Jolcover, representing himself and Comstock Mining, stated that his company and executives are in support of the proposal. He felt that Mr. Lovato's proposal was thorough, especially the details on a six-month transition period where both e-notices and newspapers are used to single the change to the public.

Mr. Tony Dimpel, representing McGinley & Associates, spoke in support of the e-notice proposal, explaining that it was much easier to access NDEP documents with the online system.

Mr. Tim Dyer, vice president of External Relations for Nevada Copper, stated his support for the proposal to go to e-notification. He stated that his company works extensively with NDEP and that Nevada is a leader in environmental regulations around the world. He complimented Mr. Lovato and

said that there was a nominal response to several types of notifications, which indicated that those who were interested are involved in the commenting process. He added that most mining companies also have public outreach programs, effectively expanding public participation because of newer notification possibilities.

Ms. Debbie Struhsacker, an environmental permitting and government relations consultant, stated her support for the proposed change. She said that her support for the proposal is rooted in the benefit for the public, not simply because it would help mining. She cited her positive experience using NDEP email lists and said she appreciated the supplementary information provided on NDEP's website, which helped her make critical decisions about her work. She suggested that, during the transition period of going to e-notification, NDEP might proactively solicit people to join their mailing lists, which would cast a broad net to the public and fulfill obligations to make sure a broad sector of the public is reached. She also recommended giving recipients the opportunity to request a hard copy in the mail and use other ways to make sure that NDEP reaches rural communities. She thanked NDEP for their research and informative presentation.

Ms. Brenda Pohlman, representing the city of Henderson's Department of Utility Services, said that her department is in support of the proposal.

Executive Secretary Val King then read Tab 5 and Tab 7 (**Attachment 7**) into the record. She added that she had received a phone call from a citizen named Barbara Smallwood of Douglas County who wanted it on the record that she was opposed to R186-18.

Tab 5 — in response to a comment letter received in the binder from Elko County Association of Realtors, dated December 4, 2018, and addressed to Greg Lovato:

*"Greg, I shared your comments with Marcella Syme, President of Elko County Association of Realtors, and in answer to your questions, yes, this is what we were hoping for, and please do proceed according to your suggestions. We appreciate your foresight and thoughtfulness. Sincerely, Paul Bottari."*

Tab 7 — a letter from Dan Fisher with Clark County Water Reclamation District, dated December 11, 2018:

*"Dear Ms. King: We are unable to appear in person at the State Environmental Commission hearing on Wednesday December 12, 2018, in Carson City, Nevada, at which the above referenced matter will be discussed. This letter expresses the support of the Clark County Water Reclamation District for R186-18, by amending regulations applicable to NDEP to change newspaper notices to e-notices, R186-18 will make it much easier for the district, our ratepayers, and stakeholders to follow NDEP actions. R186-18 will improve communications and eliminate the outdated outreach practices of using legal notices that get buried in fine print in the back of the newspaper. Specifically, we are excited about the internet website designed to allow continued access to the public notices as opposed to a single day newspaper publication. Please contact me if you wish to discuss this matter. Sincerely, Daniel C. Fisher, Deputy General Manager."*

Chair Gans asked Mr. Lovato to summarize NDEP's proposal.

Mr. Lovato said that the change would allow NDEP to post public notices on the internet as opposed to the newspaper. He said NDEP was asking for permission to allow folks to sign up for direct mailing, email, and hard copy missives to satisfy legal requirements that are intended to allow people to be aware of NDEP activities and have the opportunity for comment. He then asked Mr. Jeff Kinder to describe the air program transition.

Mr. Jeff Kinder, deputy administrator with NDEP, stated that the air program requested e-noticing in May of 2017. As part of the transition, the air program published notifications that asked citizens how they wanted to be notified, but they received zero response. The same process was repeated in September 2017, with still no response. He said that he understood the concern that feedback might not be the metric, but countered that this lack of feedback — even when explicitly solicited — was telling.

Mr. Lovato stated that NDEP recommended doing the same noticing process described by Mr. Kinder prior to transition, as well as notifying every six months, indefinitely. He noted that NDEP would gladly explain that they had followed their requirements and directives and could perform an outreach campaign, although the exact details of that were not in place yet.

Chair Gans asked for final comments from the commission and the public. There were none.

Chair Gans commented that he appreciated all of the public comments. He added that he was no expert and had to rely on others, but said he was very impressed with Mr. Crowell, Mr. Lovato, and Mr. Biaggi. He added that he did not want to spend more time on the matter.

**Motion:** Commissioner Richardson moved to approve R186-18, with the modification that newspaper advertising shall continue; however, all public noticing requirements are satisfied through e-noticing. Commissioner Landreth seconded the motion.

Commissioner Richardson clarified that his motion was to use e-notification to inform the public but also to continue using newspaper notifications for informational purposes. These print notices would reference the website to ensure that no one mode of communication is stopped during the transition.

Commissioner Perry asked if the motion would require that the language of the proposal be rewritten since Commissioner Richardson's motion wording did not match the R186-18 proposal. Ms. Rasul stated that it would depend on whether Commissioner Richardson wanted his exact wording to be placed in the regulation. Executive Secretary Val King stated that post-LCB review in the past had requested that any changed language to a regulatory petition be consistent with the original language that was noticed to the public.

Commissioner Perry stated that he was willing to discuss a sunset period of when the newspaper notifications would stop. Vice Chair Porta stated that it would be a bit awkward if the rule were changed. He proposed moving to approve and adopt the petition as presented by NDEP, but put aside a six-month period when NDEP sends both types of notifications and require a follow-up report by NDEP to the SEC on the success of the transition.

Commissioner Perry then suggested language to a motion: 1) to adopt the proposed regulations and direct NDEP to complete a six-month transition where newspaper and e-noticing are both required, starting the date the regulations are adopted and signed by the Secretary of State; 2) during that period alert the public to the change, in newspapers, for six months, in order to address the issue raised by the Elko County Realtors; 3) for the commission to review the e-noticing program in one year, in a public hearing of this body, to evaluate NDEP's and the public's view of this program after a year; and 4) direct NDEP to solicit members to the mailing list to the best of their ability.

Chair Gans stated that he did not want to drag the issue out any further, that he was in agreement with Commissioner Perry's wording.

Commissioner Turner felt that there was no opposition to the measure, citing no significant opposition by advocacy groups or the public at the meeting.

Commissioner KC stated that she agreed with the commissioners' comments, saying that NDEP had done an excellent job and that six months was more than what had occurred during the transition for the air bureau.

Commissioner Landreth recognized that people often do not respond to notices until they are an issue or a threat, so she did not put a lot of stock in the fact that there had not been a great outpouring of groups. Because of this, she noted that a substantial portion of potentially affected rural communities do not get their notifications via the internet.

Mr. Lovato rejoined that the lack of response may be because people are aware of how NDEP works and its record of credibility and strictly following its legal mandates.

A roll call vote on Commissioner Richardson's original motion was held, which failed: Chair Gans, Vice Chair Porta, and Commissioners Turner, KC, Perry, and King all voted no; Commissioners Landreth and Richardson voted yes.

**Motion:** Commissioner Perry restated the motion to adopt regulation R186-18, with the following direction to NDEP:

1. A six-month transition where newspaper noticing is still required starting from the date when the regulations are effective.
2. A review of the e-noticing program in one year in a public hearing of the State Environmental Commission.
3. NDEP should solicit members to the mailing list as best they can.

Vice Chair Porta seconded the motion, and discussion was opened.

Chair Gans asked what Commissioner Perry meant by "public hearing." Commissioner Perry responded that he meant a public meeting such as the current SEC meeting. Chair Gans asked Mr. Lovato if that would be an issue, and Mr. Lovato stated that it could be accomplished.

A roll call vote was held, which passed 6-2: Chair Gans, Vice Chair Porta, and Commissioners Turner, KC, Perry, and King voted yes; Commissioners Richardson and Landreth voted no.

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## 8) Administrator's briefing (Discussion)

Mr. Lovato announced that Elizabeth Kingsland would be replacing Bruce Holmgren as bureau chief for the Bureau of Water Pollution Control. He noted that Ms. Kingsland comes highly recommended from both the Tahoe Regional Planning Agency and, most recently, from the Nevada Division of State Lands as Tahoe program manager. Mr. Lovato said that Rick Perdomo is the new deputy administrator for NDEP. Perdomo has been NDEP's senior deputy attorney general for over two years and has a civil engineering degree and deep experience in water law and civil litigation. Rick will handle routine transactional and administrative enforcement matters for NDEP, provide a better interface with the AG's office, and tackle long-term policy and legal matters.

Recalling the June 2018 SEC meeting, Mr. Lovato said that NDEP had updated safe drinking water regulations that — among other things — increased the consistency and efficiency of engineering design review of water systems. He added that the other part of this effort is for NDEP to enter into tri-party inter-local agreements with authorized health districts and water purveyors. Mr. Lovato said that NDEP signed a northern agreement with the Washoe County Health District and the Truckee Meadows Water Authority in October 2018. He added that NDEP would forward a new version of the southern

agreement to the Southern Nevada Health District and the Las Vegas Valley Water District in the coming week, with an agreement executed in the near future.

Citing the February meeting, when the SEC approved revised education and experience requirements, Mr. Lovato then provided a brief update on the wastewater operator certification program. The Nevada Water and Wastewater Operators Forum is working with the Nevada Water Environment Association Board to conduct a survey to reach as many operators as possible. He said that NDEP staff would present the results of that survey at the May 2019 SEC meeting.

Mr. Lovato discussed three NDEP bills that have been reviewed and approved for proposal by the Department of Conservation and Natural Resources and the Governor's Office.

1. SB 42 would repeal what NDEP considers to be the obsolete alternative fuel requirements for certain public fleets contained in NRS 486A. Available data indicates that federal requirements for motor vehicles and fuels that have been enacted since NRS 486A was passed by the Nevada legislature in 1991 have addressed the air quality problems and have effectively rendered NRS 486A obsolete. NDEP is in communication with air agencies in Clark and Washoe counties and will be in contact with other affected agencies as the bill is heard. This bill has been initially assigned to the Senate Committee for Growth and Infrastructure. At the February 2018 SEC meeting, SEC members expressed concern about continued variances from the rule (Washoe County sought and was granted a 36-month variance to provisions of the alternative fuel requirements for its fleet). They asked NDEP to begin exploring an effective statutory change.
2. SB 53 — proposed by NDEP but with the support of the Nevada Division of Minerals (NDOM) — would change how the Mining Oversight and Accountability Commission (MOAC) reviews mining regulations that pertain to NDEP's reclamation program and other NDOM mine regulations. The statutory change to NRS 514A would allow changes to NDEP and NDOM regulations after they are approved by the SEC (in the case of NDEP) and the Commission on Mineral Resources (in the case of NDOM) to go to the Legislative Commission if MOAC does not review them within 30 days. MOAC has not met regularly or had quorum available since December 2015, and this change would assure that any changes to regulations would not be unduly delayed by MOAC inaction. This bill has been assigned to the Senate Committee on Natural Resources.
3. AB-1 would amend NRS 445B to make the process for noticing and adopting all proposed NDEP/SEC regulations consistent with the state's legislatively approved process for adopting regulations entitled the "Nevada Administrative Procedure Act." Under the Nevada Administrative Procedure Act, which all state agencies are required to comply with, meetings to adopt regulations are NOT required to be noticed in a newspaper. However, comprehensive noticing is required, including posting on the LCB website, the state notice website, the agency's website, an email distribution list, and other specific physical posting requirements. Importantly, there is no relationship between AB-1 and R186-18, the action item on this SEC agenda. AB-1 would address how regulations are adopted to make the process consistent with state practice. R186-18 modifies how NDEP-specific actions are noticed. This bill is scheduled to be heard by the Assembly Committee on Natural Resources, Agriculture and Mining.

Vice Chair Porta thanked Mr. Lovato for SB 42 as he thought it would save time on waivers. He added that, with Chair Gans' consent, the SEC could assist by writing a letter in support. Chair Gans agreed with this recommendation.

Commissioner Landreth asked if a deputy administrator position had been added or if the new assignment was a replacement. Mr. Lovato stated that there had been three deputy administrators at NDEP for several years, but when he was appointed administrator last year, a vacant position had been

left. He added that he discussed the issue with others and that bringing in the position would help NDEP in a tangible way, rather than just adding a layer of management.

Chair Gans thanked Mr. Lovato for his report.

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## **9) Public comment (Discussion)**

Chair Gans asked for public comments. There were none.

Chair Gans asked when the next SEC meeting was scheduled. Executive Secretary King replied that the next meeting was tentatively scheduled for May 8, 2019.

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## **10) Adjournment**

The meeting was adjourned at 12:38 pm.

*The audio recording of this meeting is available at: [http://00505691de41\(DRAFT LINK\)](http://00505691de41(DRAFT LINK))*

# **ATTACHMENTS**

**ATTACHMENT 1:** Cemex Construction Materials Pacific, LLC, NOAV 2660

**ATTACHMENT 2:** Map for Air Penalties

**ATTACHMENT 3:** Joy Engineering, NOAV 2643

**ATTACHMENT 4:** Gopher Construction, Inc. NOAV 2661

**ATTACHMENT 5:** Regulatory Petition R186-18

**ATTACHMENT 6:** PowerPoint for Regulation R186-18

**ATTACHMENT 7:** Comment Letters

# **ATTACHMENT 1:**

Cemex Construction Materials Pacific, LLC, NOAV 2660



## AGENDA ITEM #4: Penalty Presentation

### Cemex Construction Materials Pacific, LLC, Storey County

**NOAV #2660 with total proposed penalty of \$8,400.00**

**Cemex Construction Materials Pacific, LLC** (Cemex) operated an aggregate processing facility east of Sparks, Nevada under Class II Air Quality Operating Permit AP1442-0175 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on October 24, 2011. Cemex currently operates under Class II Air Quality Operating Permit AP1442-3826 which was issued on November 8, 2017.

Cemex’s Operating Permit requires them to operate air pollution control devices on many of their emission units. During a site inspection on November 1, 2017 BAPC compliance staff observed fourteen emission units operating without the required control devices in operation. Emission units that were observed to be operating without controls, and the Operating Permit required controls are listed in Table 1. All the controls were installed and operational within reasonable time after the inspection.

**Table 1 - Emission Units Observed Operating Without Required Air Pollution Controls**

System	Emission Unit	Description	Required Control Device
1	PF1.001	Loader transfer to grizzly feeder S-1PPF	Pneumatic fogging sprays
2	PF1.002	Grizzly feeder S-1PPF & discharge to conveyor PP-1	Pneumatic fogging sprays
3	PF1.003	Grizzly feeder S-1PPF & discharge to jaw crusher S-2PPJ	Pneumatic fogging sprays
3	PF1.004	Jaw crusher S-2PPJ	Pneumatic fogging sprays
3	PF1.005	Discharge from jaw crusher S-2PPJ to conveyor PP-1	Pneumatic fogging sprays
4	PF1.006	Conveyor PP-1 discharge to conveyor PP-2	Pneumatic fogging sprays
5	PF1.007	Conveyor PP-1 discharge to double deck screen S-3PPS	Pneumatic fogging sprays
5	PF1.008	Double deck screen S-3PPS	Pneumatic fogging sprays
5	PF1.009	Double deck screen S-3PPS discharge to conveyor PP-3	Pneumatic fogging sprays
5	PF1.010	Double deck screen S-3PPS discharge to conveyor PP-4	Pneumatic fogging sprays
5	PF1.011	Double deck screen S-3PPS discharge to conveyor PP-6	Pneumatic fogging sprays
6	PF1.012	Conveyor PP-3 discharge to coarse material stockpile	Pneumatic fogging sprays
7	PF1.013	Conveyor PP-4 discharge to conveyor PP-5	Pneumatic fogging sprays
8	PF1.014	Conveyor PP 5 discharge to rip rap stockpile	Pneumatic fogging sprays

On September 20, 2018, an enforcement conference was held between the Bureau of Air Quality Planning (BAQP) staff and Cemex to review the findings of Notice of Alleged Violation and Order (NOAV) #2660, to afford Cemex an opportunity to provide evidence of mitigating factors or extenuating circumstances in relation to the findings, and to determine whether issuance of NOAV #2660 was or was not warranted. Cemex did not dispute the findings and did not present any information to indicate that the violations had not occurred as alleged. On October 3, 2018, NOAV 2660 was issued for the violation pursuant to Nevada Administrative Code (NAC) 445B.275 (c) - Failure to construct or operate a stationary source in accordance with any condition of an operating permit.

The BAQP staff calculated penalties using the penalty matrix and is providing recommended penalty

amount of **\$8,400.00** for the fourteen occurrences of the violation. The recommended penalty amounts were calculated considering the base penalty, extent of deviation, and penalty adjustment factors as appropriate. These violations represent Cemex’s first air quality violations within the last 60 months. No appeals were filed related to NOAV #2660.

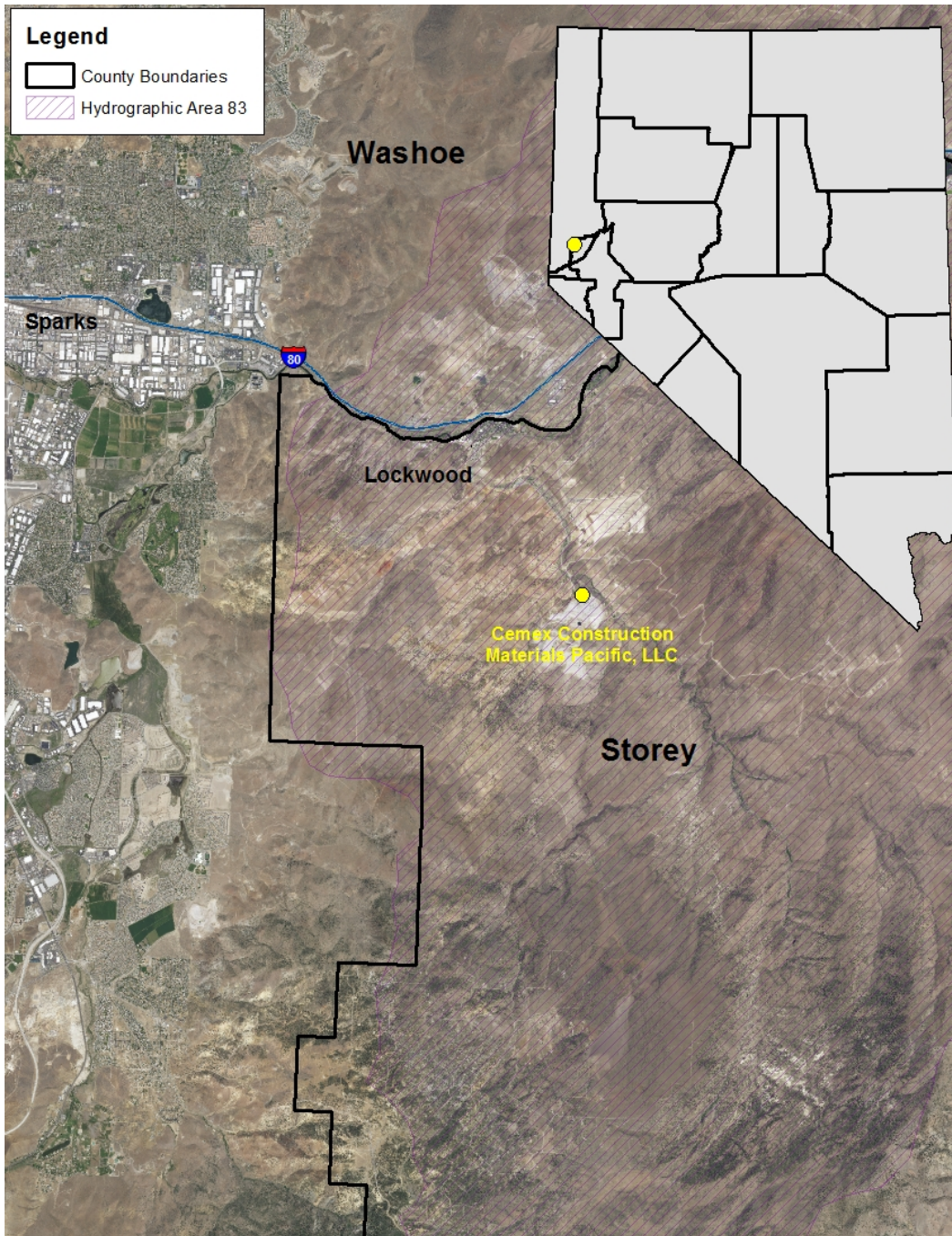
**AGENDA ITEM #4: Facility Location**

**Cemex Construction Materials Pacific, LLC, Storey County, Nevada**

Physical Address: 3005 Canyon Way, Sparks, Nevada

Coordinates: North 4,373.137 KM, East 274.907 KM – UTM Zone 11 (NAD 83)

Figure 1 - Vicinity Map



**AGENDA ITEM #4: Photo for Reference**

**Cemex Construction Materials Pacific, LLC, Storey County**

**Photo 1: Damaged water lines for the pneumatic fogging water sprays for System 1.**



**Photo 2: Water spray not in operation.**



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

**For:** Cemex Construction Materials Pacific, LLC - FIN A0425 - Permit AP1442-0175

**Violation:** NAC445B.275(1)(c) - Failure to Maintain Process or Controls

**NOAV:** 2660

**I. Gravity Component**

**A. Base Penalty: \$1,000 or as specified in the Penalty Table =** \$ 600

**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 =** 1

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

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

**Adjustment to Base Penalty =** 1

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**Adjustment to Base Penalty =** 1

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

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

**Adjustment to Base Penalty =** 1

**Deviation Factors 1 x 2 x 3:** 1

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =** \$ 600

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

$$\frac{\$ 600}{\text{Dollar Amount}} \times \frac{1}{\text{Number of Days}} \times \frac{14}{\text{Number of Units}} = \frac{\$ 8,400}{\text{Total Gravity Fine}}$$

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

**II. Economic Benefit**

<b>A.</b>	<u>\$ -</u> Delayed Costs	+	<u>\$ -</u> Avoided Costs	=	<u>\$ -</u> <b>Economic Benefit</b>
<b>Subtotal</b>	<u>\$ 8,400</u> Total Gravity Fine	+	<u>\$ -</u> Economic Benefit	=	<u>\$ 8,400</u> <b>Fine Subtotal</b>

**III. Penalty Adjustment Factors**

<b>A. Mitigating Factors</b>		<u>0%</u>
<b>B. History of Non-compliance</b>		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>0%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 0 =		<u>0%</u>
Total Penalty Adjustment Factors - <b>Sum of A &amp; B:</b>		<u>0%</u>

**IV. Total Penalty**

<u>\$ 8,400</u> Penalty Subtotal (from Part II)	x	<u>0%</u> Total Adjustment Factors	=	<u>\$ -</u> <b>Total Adjustment</b>
<u>\$ 8,400</u> Penalty Subtotal (from Part II)	+	<u>\$ -</u> Penalty Increase or Decrease	=	<u>\$ 8,400.00</u> <b>Total Penalty</b>

**Assessed by:** Andrew Tucker

**Date:** 7/23/2018

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

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:     < 20% or      $\geq 20\%$  or      $\geq 30\%$       $\geq 40\%$       $\geq 50\%$   
                   NSPS Limit   NSPS Limit  
                   (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> <i>(all pollutants are minor)</i>	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
“Threshold” pollutant*	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
Major pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$

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



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

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

October 3, 2018

Bruce Eppler  
Environmental Manager  
Cemex Construction Materials Pacific, LLC  
2365 Iron Point Road, Suite 120  
Folsom, California 95630

***RE: Notice of Alleged Air Quality Violation and Order No. 2660 for Class II Air Quality Operating Permit AP1442-0175.03 (FIN A0425)***

Dear Mr. Eppler:

The Nevada Division of Environmental Protection – Bureau of Air Quality Planning (BAQP) alleges that Cemex Construction Materials Pacific, LLC (Cemex) has violated conditions of Class II Air Quality Operating Permit AP1442-0175.03, subsequently replaced by Class II Air Quality Operating Permit AP1442-3826 on November 8, 2017.

The attached Notice of Alleged Air Quality Violation (NOAV) and Order No. 2660 alleges that Cemex has failed operate a stationary source in accordance with any condition of an operating permit. For specific information regarding the alleged violations, please refer to the attached NOAV No. 2660.

On September 20, 2018, the BAQP held an enforcement conference with Cemex to determine whether issuance of NOAV and Order No. 2660 was or was not warranted. Based on the information provided by Cemex, the BAQP has determined that formal issuance of NOAV No. 2660 is warranted.

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 each air quality violation. The BAQP will be recommending a penalty of **\$8,400.00**, for NOAV No. 2660 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**.

An appeal of NOAV Nos. 2660 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.

Cemex Construction Materials Pacific, LLC  
October 3, 2018  
Page 2 of 2

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 Order No. 2660  
2.) SEC Appeal Form #3

cc (w/enc.): Val King, SEC  
Storey County Board of Commissioners  
FIN A0425 (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 0040 4668 87



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. 2660

**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

**Person(s) to Whom Served:** Mr. Bruce Eppler, Environmental Manager  
**Company Name:** Cemex Construction Materials Pacific, LLC  
**Address:** 2365 Iron Point Road, Suite #120, Folsom California 95630  
**Permit Number:** AP1442-0175.03 **FIN:** A0425

**Site of Alleged Violation:** 3005 Canyon Way, Sparks, Nevada 89434  
**Date of Observation:** 11/1/2017 **Arrival:** 2:00 PM **Departure:** 3:00 PM  
**Ambient Temperature:** 70 °F **Clear:** X **Cloudy:** **Rain:** **Snow:**  
**Wind Speed:** N/A mph **Wind Direction:** N/A

**It is alleged that the following regulations were 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.3689, 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 operate air pollution control equipment as per Class II Air Quality Operating Permit AP1442-0175.03 (Operating Permit).

**Evidence:**

Cemex Construction Materials Pacific, LLC (Cemex) operates an aggregate plant facility under the requirements of Operating Permit AP1442-0175.03 issued October 24, 2011. Cemex's Operating Permit expired on October 24, 2016 failing to renew the Operating Permit. The Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) wrote a Compliance Order No. 2017-17 on February 9, 2017 to allow Cemex to continue operation while a new Operating Permit was constructed. The new Operating Permit (AP1442-3826) was issued to Cemex on November 8, 2017.

On November 1, 2017, the BAPC conducted an inspection of Cemex because they saw a large amount of dust being emitted from the Cemex facility. While conducting the inspection the BAPC observed that the facility was operating Systems 1 through 8 without the required pneumatic fogging sprays in operation as required by the Operating Permit. Additionally, it was observed that some of the pipes and hoses for the controls were in a state of disrepair that rendered the controls nonfunctional. Table 1 provides further detail of the fourteen uncontrolled emission units.

**Table 1: Emission Units Observed Operating Without Required Air Pollution Controls**

System	Emission Unit	Description	Required Control Device
1	PF1.001	Loader transfer to grizzly feeder S-1PPF	Pneumatic fogging sprays
2	PF1.002	Grizzly feeder S-1PPF & discharge to conveyor PP-1	Pneumatic fogging sprays
3	PF1.003	Grizzly feeder S-1PPF & discharge to jaw crusher S-2PPJ	Pneumatic fogging sprays
3	PF1.004	Jaw crusher S-2PPJ	Pneumatic fogging sprays
3	PF1.005	Discharge from jaw crusher S-2PPJ to conveyor PP-1	Pneumatic fogging sprays

**NOTICE OF ALLEGED AIR QUALITY VIOLATION (CONTINUED)**

4	PF1.006	Conveyor PP-1 discharge to conveyor PP-2	Pneumatic fogging sprays
5	PF1.007	Conveyor PP-1 discharge to double deck screen S-3PPS	Pneumatic fogging sprays
5	PF1.008	Double deck screen S-3PPS	Pneumatic fogging sprays
5	PF1.009	Double deck screen S-3PPS discharge to conveyor PP-3	Pneumatic fogging sprays
5	PF1.010	Double deck screen S-3PPS discharge to conveyor PP-4	Pneumatic fogging sprays
5	PF1.011	Double deck screen S-3PPS discharge to conveyor PP-6	Pneumatic fogging sprays
6	PF1.012	Conveyor PP-3 discharge to coarse material stockpile	Pneumatic fogging sprays
7	PF1.013	Conveyor PP-4 discharge to conveyor PP-5	Pneumatic fogging sprays
8	PF1.014	Conveyor PP 5 discharge to rip rap stockpile	Pneumatic fogging sprays

On September 20, 2018 the Nevada Division of Environmental Protection - Bureau of Air Quality Planning (BAQP) held an enforcement conference with Cemex to determine whether issuance of Notice of Alleged Air Quality Violation and Order (NOAV) No. 2660 was or was not warranted. Based on the information provided by Cemex, the BAQP has determined that formal issuance of NOAV No. 2660 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation. NOAV No. 2660 represents Cemex'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.281.3: \$ \_\_\_\_\_

To take corrective action: Maintain and operate all control devices as required by the Operating Permit.

\_\_\_\_\_ To appear for an enforcement conference at:  
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 03, 2018

REW/ajt

Certified Mail No.: 9171 9690 0935 0040 4668 87

*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.*

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](http://www.sec.nv.gov)

Bradley Crowell  
Director



CHAIRMAN  
Eugene Gans  
Las Vegas, NV

VICE CHAIRMAN  
Tom Porta  
Reno, NV

MEMBERS

Kacey KC  
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Las Vegas, NV

Jason King  
State Engineer  
Division of Water  
Resources

Kathryn Landreth  
Reno, NV

Vacant  
Director, Department of  
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  
Henna Rasul

STAFF  
Valerie King  
Executive Secretary

Shanon Pascual  
Recording Secretary

October 24, 2018

Mr. Bruce Eppler  
Environmental Engineer  
Cemex Construction Materials Pacific, LLC  
2365 Iron Point Road, Suite 120  
Folsom, California 95630

RE: Notice of Alleged Air Quality Violation and Order No. 2660  
Class II Air Quality Operating Permit AP1442-0175.03 (FIN A0425)

Dear Mr. Eppler:

On September 20, 2018, the Nevada Division of Environmental Protection (NDEP) held an enforcement conference with Cemex Construction Materials Pacific, LLC (Cemex) to discuss supporting information regarding the draft Notice of Alleged Violation and Order (NOAV) No. 2660. As a result of that meeting, NDEP formally issued the above NOAV. See attachment.

NDEP sent NOAV No. 2660 via certified mail on October 3, 2018, notifying Cemex of its appeal rights pursuant to NRS 445B.340 and NRS 445B.360. Cemex did not appeal the NOAV. Therefore, the State Environmental Commission (SEC) will determine the appropriate penalty for the violations contained in the above referenced NOAV on **Wednesday, December 12, 2018 at 9:30 a.m. at the Laxalt Building, Second Floor, located at 401 North Carson Street, Carson City. The meeting will also be video-conferenced in Las Vegas at the Grant Sawyer Building, Room 5100, located at 555 East Washington Avenue, Las Vegas.**

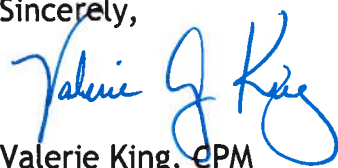
Pursuant to NRS 445B.640(1), the SEC may approve an administrative penalty of not more than \$10,000 per day per violation. During the December 12, 2018 meeting, NDEP will provide the SEC with a brief overview of the NOAV and the recommendation for an administrative penalty of \$8,400.00. This recommended penalty was 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 Cemex.

The SEC may, without further notice, take administrative action against Cemex if the SEC determines that such administrative action is warranted after it considers NOAV No. 2660.

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 2755 30

ec: Greg Lovato, Administrator  
Jeffrey Kinder, Deputy Administrator  
Danilo Dragoni, Chief, BAQP  
Robert Whited, Supervisor, BAQP  
Jim Gans, SEC, Chairman  
Henna Rasul, SEC/DAG

# ATTACHMENT 2:

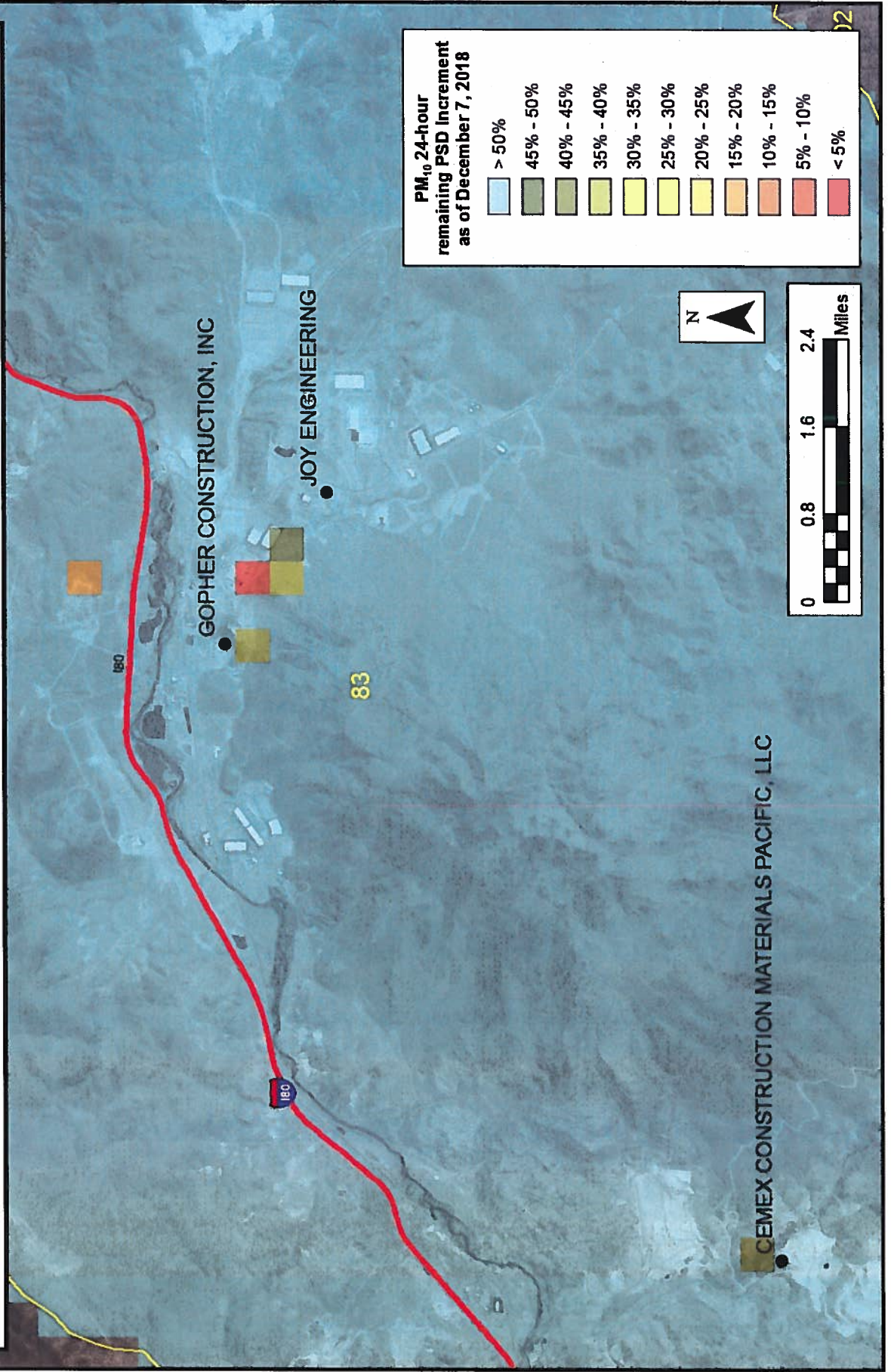
Map for Air Penalties

NEVADA DIVISION OF

**ENVIRONMENTAL  
PROTECTION**



# PSD Increment In Hydrographic Area 83



# **ATTACHMENT 3:**

Joy Engineering, NOAV 2643



## AGENDA ITEM #5: Penalty Presentation

### Joy Engineering, Storey County

#### NOAV #2643 with total proposed penalty of \$2,900.00

**Joy Engineering** (Joy) operates an aggregate processing facility east of Sparks, Nevada under Class II General Air Quality Operating Permit for Temporary Sources No. AP1442-2259.03 (Operating Permit). Change of Location Approval (COLA) No. 2550 was issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on March 31, 2017. COLA No. 2550 expired on March 31, 2018.

The BAPC conducted an inspection of Joy on April 5, 2018 and found that the facility was operating five days after their permit expired. BAPC staff notified Joy that their COLA had expired and they were no longer permitted to operate their equipment. Joy's consultant subsequently informed the Bureau of Air Quality Planning (BAQP) that Joy had ceased operations after being informed that their permit was expired.

On April 13, 2018, an enforcement conference was held with between BAQP staff and Joy to review the findings of Notice of Alleged Violation and Order (NOAV) #2643, to afford Joy an opportunity to provide evidence of mitigating factors or extenuating circumstances in relation to the findings, and to determine whether issuance of NOAV #2643 was or was not warranted. Joy did not dispute the findings and did not present any information to indicate that the violations had not occurred as alleged. During the enforcement conference Joy stated that they were mistaken on when the permit expired and requested the BAPC for 10 additional working days in order to fulfill their task order. The BAPC issued Compliance Order 2018-12 on April 17, 2018 to allow Joy to operate until May 1, 2018 in order to allow Joy to complete the job. Joy respected the terms of Compliance Order and was not operating at that location after May 1, 2018.

On October 3, 2018, NOAV No. 2643 was issued for the violation pursuant to Nevada Administrative Code (NAC) 445B.275 (a) - Failure to apply for and obtain an operating permit.

The BAQP staff calculated penalties using the penalty matrix and is providing recommended penalty amount of **\$2,900.00** for the operation of unpermitted equipment for one week. The recommended penalty amounts were calculated considering the base penalty, extent of deviation, and penalty adjustment factors as appropriate. These violations represent Joy's first air quality violation within the last 60 months. No appeals were filed related to NOAV #2643.

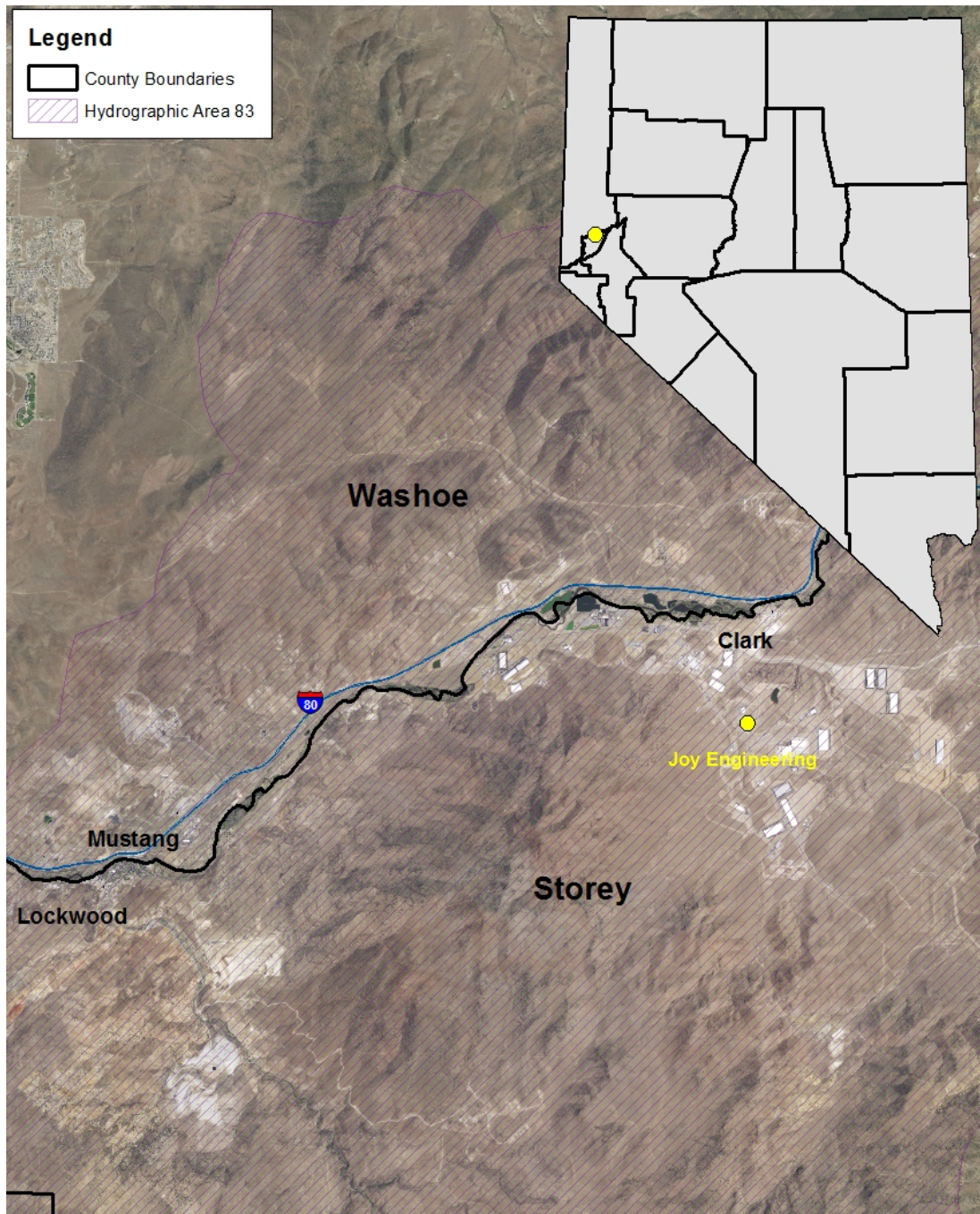
## AGENDA ITEM #5: Facility Location

### Joy Engineering, Storey County

Physical Address: Pit on USA Parkway, just north of the intersection of USA Parkway and Denmark Drive, Tahoe Regional Industrial Center, McCarran, Nevada

Coordinates: North 4,379.911 KM, East 286.278 KM – UTM Zone 11 (NAD 83)

Figure 1 - Vicinity Map



**AGENDA ITEM #5: Photo for Reference**

**Joy Engineering, Storey County**

Photo 1: Equipment operating after the COLA expiration date.



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

**For:** Joy Engineering - FIN A0769 - Permit AP1442-2259

**Violation:** NAC445B.275(1)(a) - Operating Without a Permit

**NOAV:** 2643

**I. Gravity Component**

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

**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** = 1

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

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

**Adjustment to Base Penalty** = 1

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**Adjustment to Base Penalty** = 1

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

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

**Adjustment to Base Penalty** = 1

**Deviation Factors 1 x 2 x 3:** 1

**C. Adjusted Base Penalty:** Base Penalty (A) x Deviation Factors (B) = \$ 1,000

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

$$\frac{\$ 1,000}{\text{Dollar Amount}} \times \frac{1}{\text{Number of Weeks}} \times \frac{1}{\text{Number of Systems}} = \frac{\$ 1,000}{\text{Total Gravity Fine}}$$

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

**II. Economic Benefit**

<b>A.</b>	<u>\$ -</u> Delayed Costs	+	<u>\$ 1,900</u> Avoided Costs	=	<u>\$ 1,900</u> <b>Economic Benefit</b>
<small>Joy Engineering avoided the cost of a new Class II General COLA (\$1,900), so that was used as an economic benefit.</small>					
<b>Subtotal</b>	<u>\$ 1,000</u> Total Gravity Fine	+	<u>\$ 1,900</u> Economic Benefit	=	<u>\$ 2,900</u> <b>Fine Subtotal</b>

**III. Penalty Adjustment Factors**

<b>A.</b>	<b>Mitigating Factors</b>	<u>0%</u>
<b>B.</b>	<b>History of Non-compliance</b>	
1.	Similar Violations (NOAVs) in previous 5 years: Within previous year (12 months) = 3X (+300%) Within previous three years (36 months) = 2X (+200%) Occurring over three years before = 1.5X (+150%)	<u>0%</u>
2.	All Recent Violations (NOAVs) in previous 5 years: (+5%) X (Number of recent Violations) = 5% X 0 =	<u>0%</u>
	<b>Total Penalty Adjustment Factors - Sum of A &amp; B:</b>	<u>0%</u>

**IV. Total Penalty**

<u>\$ 2,900</u> Penalty Subtotal (from Part II)	x	<u>0%</u> Total Adjustment Factors	=	<u>\$ -</u> <b>Total Adjustment</b>
<u>\$ 2,900</u> Penalty Subtotal (from Part II)	+	<u>\$ -</u> Penalty Increase or Decrease	=	<u>\$ 2,900.00</u> <b>Total Penalty</b>

**Assessed by:** Andrew Tucker

**Date:** 9/27/2018

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

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:     < 20% or      $\geq 20\%$  or      $\geq 30\%$       $\geq 40\%$       $\geq 50\%$   
                   NSPS Limit   NSPS Limit  
                   (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> <i>(all pollutants are minor)</i>	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
“Threshold” pollutant*	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
Major pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$

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



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources

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

October 3, 2018

Richard Joy  
President  
Joy Engineering  
1584 Wolf Meadows Lane  
Portola, California 96122

**RE: Notice of Alleged Air Quality Violation and Order No. 2643  
Class II General Air Quality Operating Permit AP1442-2259.03 COLA #2550  
(FIN A0769)**

Dear Mr. Joy:

The Nevada Division of Environmental Protection - Bureau of Air Pollution Control (BAPC) alleges that Joy Engineering (Joy) has violated conditions of Class II General Air Quality Operating Permit No. AP1442-2259.03 (Operating Permit).

The attached Notice of Alleged Air Quality Violation (NOAV) and Order No. 2643 alleges that Joy has failed to operate a stationary source in accordance with any condition of their Operating Permit. For specific information regarding the alleged violation, please refer to the attached NOAV No. 2643.

On September 21, 2018 the BAQP held an enforcement conference with Joy to determine whether issuance of NOAV and Order No. 2643 was or was not warranted. Based on the information provided by Joy, the BAQP has determined that formal issuance of NOAV No. 2643 is warranted.

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 each air quality violation. The BAQP will be recommending a penalty of **\$2,900.00**, for NOAV No. 2643 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**.

An appeal of NOAV No. 2643 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.

Joy Engineering Inc.  
October 3, 2018  
Page 2 of 2

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 Order No. 2643  
2.) SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC  
Storey County Board of Commissioners  
FIN A0769 (Certified Copy)

E-Copy: Danilo Dragoni, Ph.D, Chief, BAQP  
Lisa Kremer, P.E., Chief, BAPC  
Ryan Clark, Permitting Supervisor, BAPC  
Nathan Carrasco, BAPC  
Andrew Tucker, Enforcement Staff, BAQP

Certified Mail No.: 9171 9690 0935 0040 4668 49



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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. 2643

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**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

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**Person(s) to Whom Served:** Richard Joy, President

**Company Name:** Joy Engineering

**Address:** 1584 Wolf Meadows Lane, Portola, California 96122

**Permit Number:** AP1442-2259.03 **FIN:** A0769

**Site of Alleged Violation:** USA Parkway, Clark, Storey County, NV

**Date of Observation:** 4/5/2018 **Time:** 10:00am

**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.3689, 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:*

*(a) Failure to apply for and obtain an operating permit;*

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

Operating emission units without an operating permit.

**Evidence:**

Joy Engineering (Joy) currently holds a Class II General Air Quality Operating Permit for Temporary Sources (Operating Permit). Joy was issued a Class II Change of Location Approval (COLA) #2550 to operate a crushing and screening plant under the requirements of Class II General Air Quality Operating Permit No. AP1442-2259.03 issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on March 31, 2017.

On April 5, 2018, the BAPC conducted an inspection of Joy and found that Joy was operating without an Operating Permit. Joy's Operating Permit had expired on March 31, 2018. The Nevada Division of Environmental Protection – Bureau of Air Quality Planning (BAQP) was contacted by Joy's consulting company McGinley and Associates to inform the BAQP that Joy had been operating but shut down as soon as they were informed that their Operating Permit has expired.

The Operating Permit requires Joy to cease operations 12 months after the issuance date of the COLA.

On April 13, 2018 the BAQP held an Enforcement Conference to determine whether issuance of Notices of Alleged Air Quality Violation and Order (NOAV) No. 2643 was or was not warranted. During the Enforcement Conference Joy asked if they could get a Compliance Order to continue to operate for 10 more days to finish the project that they were working on. The Enforcement Conference for NOAV No. 2643 was suspended and rescheduled for a later date.

On April 17, 2018 the BAPC issued Compliance Order 2018-12. Joy was to cease operations on May 1, 2018.

**Evidence Continued:**

On September 21, 2018 the BAQP held another enforcement conference with Joy to determine whether issuance of Notices of Alleged Air Quality Violation and Order (NOAV) No. 2643 was or was not warranted. Based on the information provided by Joy, the BAQP has determined that formal issuance of NOAV No. 2643 is warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation and it is the Joy'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:  
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 Quality Planning

Phone: 775-687-9335 Date: October 3, 2018

REW/ajt

Certified Mail No.: 9171 9690 0935 0040 4668 49

*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.*

**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](http://www.sec.nv.gov)

**Bradley Crowell**  
Director



CHAIRMAN  
Eugene Gans  
Las Vegas, NV

VICE CHAIRMAN  
Tom Porta  
Reno, NV

MEMBERS

Kacey KC  
State Forester  
Division of Forestry

Vacant  
State Board of Health  
Las Vegas, NV

Jason King  
State Engineer  
Division of Water  
Resources

Kathryn Landreth  
Reno, NV

Vacant  
Director, Department of  
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  
Henna Rasul

STAFF  
Valerie King  
Executive Secretary

Shanon Pascual  
Recording Secretary

October 24, 2018

Mr. Richard Joy  
President  
Joy Engineering  
1584 Wolf Meadows Lane  
Portola, California 96122

RE: Notice of Alleged Air Quality Violation and Order No. 2643  
Class II General Air Quality Operating Permit AP1442-2259.03  
COLA #2550 (FIN A0769)

Dear Mr. Joy:

On September 21, 2018, the Nevada Division of Environmental Protection (NDEP) held an enforcement conference with Joy Engineering to discuss supporting information regarding the draft Notice of Alleged Violation and Order (NOAV) No. 2643. As a result of that meeting, NDEP formally issued the above NOAV. See attachment.

NDEP sent NOAV No. 2643 via certified mail on October 3, 2018, notifying Joy Engineering of its appeal rights pursuant to NRS 445B.340 and NRS 445B.360. Joy Engineering did not appeal the NOAV. Therefore, the State Environmental Commission (SEC) will determine the appropriate penalty for the violations contained in the above referenced NOAV on **Wednesday, December 12, 2018 at 9:30 a.m. at the Laxalt Building, Second Floor, located at 401 North Carson Street, Carson City. The meeting will also be video-conferenced in Las Vegas at the Grant Sawyer Building, Room 5100, located at 555 East Washington Avenue, Las Vegas.**

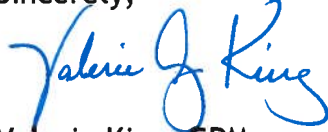
Pursuant to NRS 445B.640(1), the SEC may approve an administrative penalty of not more than \$10,000 per day per violation. During the December 12, 2018 meeting, NDEP will provide the SEC with a brief overview of the NOAVs and the recommendation for an administrative penalty of \$2,900.00. This recommended penalty was 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 Joy Engineering.

The SEC may, without further notice, take administrative action against Joy Engineering if the SEC determines that such administrative action is warranted after it considers NOAV No. 2643.

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 2755 54

ec: Greg Lovato, Administrator  
Jeffrey Kinder, Deputy Administrator  
Danilo Dragoni, Chief, BAQP  
Robert Whited, Supervisor, BAQP  
Jim Gans, SEC, Chairman  
Henna Rasul, SEC/DAG

# **ATTACHMENT 4:**

Gopher Construction, Inc. NOAV 2661

## AGENDA ITEM #6: Penalty Presentation

### Gopher Construction, Inc., Storey County

**NOAV #2661 with total proposed penalty of \$8,000.00**

**Gopher Construction, Inc.** (Gopher) operates an aggregate processing facility east of Sparks, Nevada under Class II Air Quality Operating Permit AP1442-1396.02 (Operating Permit), issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control (BAPC) on May 29, 2014.

Gopher's Operating Permit allows them to operate a specific set of emission units. During a compliance inspection on November 3, 2017 BAPC compliance staff observed that additional equipment had been brought on-site and operated for two weeks. After the inspection, the unpermitted equipment was removed from the facility.

On September 20, 2018, an enforcement conference was held with between the Bureau of Air Quality Planning (BAQP) staff and Gopher to review the findings of Notice of Alleged Violation and Order (NOAV) #2661, to afford Gopher an opportunity to provide evidence of mitigating factors or extenuating circumstances in relation to the findings, and to determine whether issuance of NOAV #2661 was or was not warranted. Gopher did not dispute the findings and did not present any information to indicate that the violations had not occurred as alleged. On October 16, 2018, NOAV 2661 was issued for the violation pursuant to Nevada Administrative Code (NAC) 445B.275 (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.

The BAQP staff calculated penalties using the penalty matrix and is providing recommended penalty amount of **\$8,000.00** for the operation of unpermitted equipment for two weeks. The recommended penalty amounts were calculated considering the base penalty, extent of deviation, and penalty adjustment factors as appropriate. These violations represent Gopher's first air quality violations within the last 60 months. No appeals were filed related to NOAV #2661.

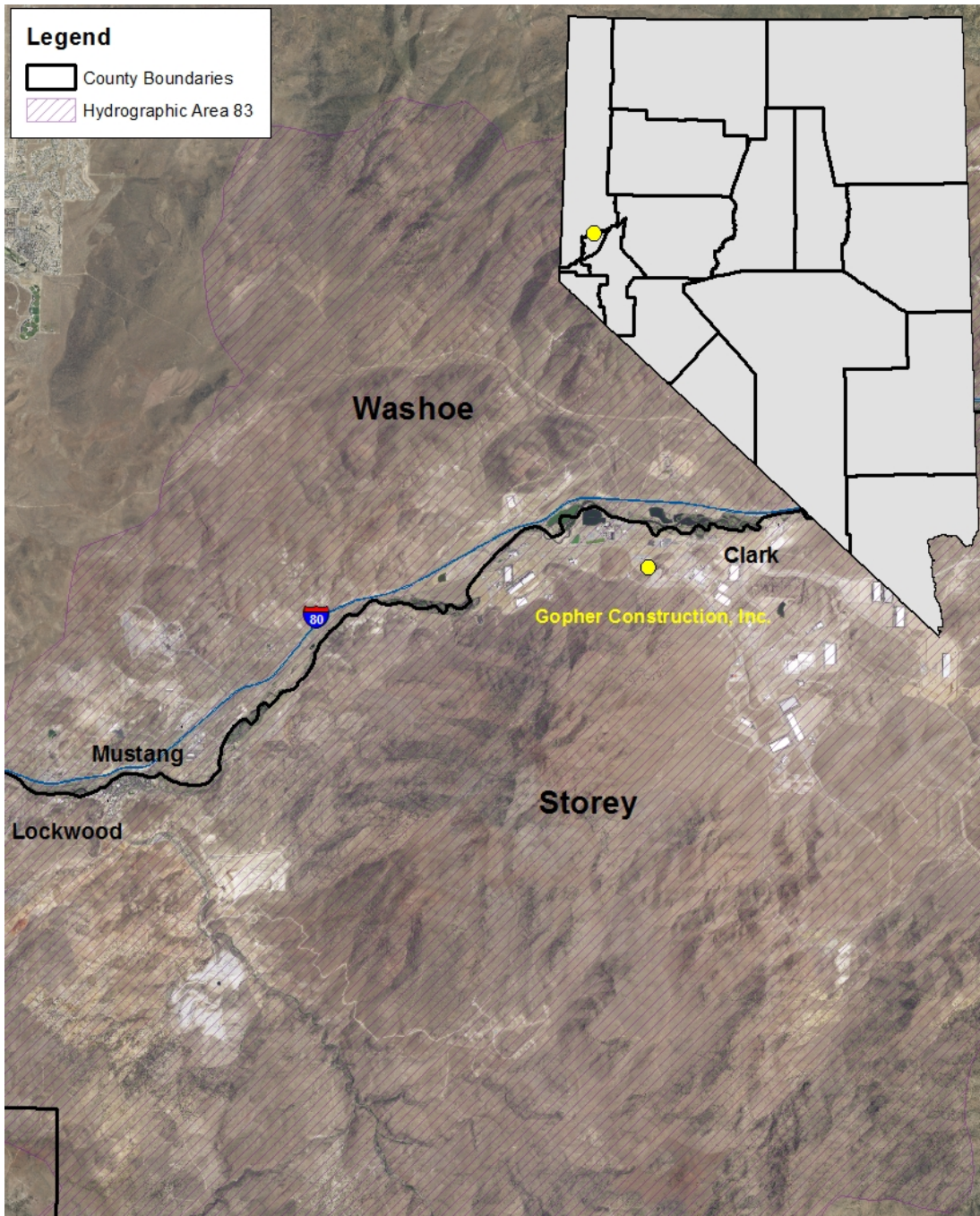
## AGENDA ITEM #6: Facility Location

### Gopher Construction, Inc., Storey County

Physical Address: Pit at the end of Peru Way, off Waltham, Tahoe Regional Industrial Center, McCarran, Nevada

Coordinates: North 4,381.420 KM, East 284.030 KM – UTM Zone 11 (NAD 83)

Figure 1 - Vicinity Map





**AGENDA ITEM #6: Photo for Reference**

**Gopher Construction, Inc., Storey County**

Photo 1: Unpermitted portable crushing and screening circuit.



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

**For:** Gopher Construction, Inc. - FIN A0441 - Permit AP1442-1396

**Violation:** NAC445B.275(1)(d) - Commencing Construction Without a Permit

**NOAV:** 2661

**I. Gravity Component**

**A. Base Penalty: \$1,000 or as specified in the Penalty Table =** \$ 3,000

**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 =** 1

**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

**2. Toxicity of Release: Hazardous Air Pollutant (if applicable)**

**Adjustment to Base Penalty =** 1

**3. Special Environmental/Public Health Risk (proximity to sensitive receptor):**

1	2	3	4
Negligible amount	Medium amount	Relatively high amount	Extremely high amount

**Adjustment to Base Penalty =** 1

**Deviation Factors 1 x 2 x 3:** 1

**C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) =** \$ 3,000

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

$$\frac{\$ 3,000}{\text{Dollar Amount}} \times \frac{2}{\text{Number of Weeks}} \times \frac{1}{\text{Number of Systems}} = \frac{\$ 6,000}{\text{Total Gravity Fine}}$$

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

**II. Economic Benefit**

<b>A.</b>	<u>\$ -</u>	+	<u>\$ 2,000</u>	=	<u>\$ 2,000</u>
	Delayed Costs		Avoided Costs		<b>Economic Benefit</b>
<small>Gopher Construction avoided the cost of a Class II permit revision (\$2,000), so that was used as an economic benefit.</small>					
<b>Subtotal</b>	<u>\$ 6,000</u>	+	<u>\$ 2,000</u>	=	<u>\$ 8,000</u>
	Total Gravity Fine		Economic Benefit		<b>Fine Subtotal</b>

**III. Penalty Adjustment Factors**

<b>A. Mitigating Factors</b>		<u>0%</u>
<b>B. History of Non-compliance</b>		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>0%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 0 =		<u>0%</u>
Total Penalty Adjustment Factors - <b>Sum of A &amp; B:</b>		<u>0%</u>

**IV. Total Penalty**

<u>\$ 8,000</u>	x	<u>0%</u>	=	<u>\$ -</u>
Penalty Subtotal (from Part II)		Total Adjustment Factors		<b>Total Adjustment</b>
<u>\$ 8,000</u>	+	<u>\$ -</u>	=	<u>\$ 8,000.00</u>
Penalty Subtotal (from Part II)		Penalty Increase or Decrease		<b>Total Penalty</b>

**Assessed by:** Robert Whited

**Date:** 9/25/2018

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

**Guidelines for I.A.1, Gravity Component: Potential for Harm, Volume of Release**

**Determining Volume of Release based on opacity:**

<b>1</b>	<b>1.5</b>	<b>2.5</b>	<b>4</b>	<b>6</b>
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Opacity:     < 20% or      $\geq 20\%$  or      $\geq 30\%$       $\geq 40\%$       $\geq 50\%$   
 NSPS Limit   NSPS Limit  
 (where NSPS opacity limit is < 20%)

**Determining Volume of Release based on CEMS or source testing:**

Use excess emission ratio: Ratio of Emissions to Permitted Emission Limit,  $r$

<u>Source &amp; pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
<b>Minor sources:</b> <i>(all pollutants are minor)</i>	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
<b>Major &amp; SM sources:</b> Minor pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
“Threshold” pollutant*	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$
Major pollutant	$r < 1.2$ $r \geq 1.2$	(none) proportional to $r$

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



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](mailto: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](mailto: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

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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

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**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

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**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.*



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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

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**NOTICE OF ALLEGED AIR QUALITY VIOLATION**

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**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.

ORDER

Under the authority of Nevada Revised Statute (NRS) 445B.100 to 445B.640, inclusive, the person named in this notice is ordered:

X  To pay the following administrative fine in accordance with 445B.281.1:  \$500.00

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: 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.*

**BRIAN SANDOVAL**  
Governor



CHAIRMAN  
Eugene Gans  
Las Vegas, NV

VICE CHAIRMAN  
Tom Porta  
Reno, NV

MEMBERS

Kacey KC  
State Forester  
Division of Forestry

Vacant  
State Board of Health  
Las Vegas, NV

Jason King  
State Engineer  
Division of Water  
Resources

Kathryn Landreth  
Reno, NV

Vacant  
Director, Department of  
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  
Henna Rasul

STAFF  
Valerie King  
Executive Secretary

Shanon Pascual  
Recording Secretary

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](http://www.sec.nv.gov)

October 24, 2018

**Bradley Crowell**  
Director



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

RE: Notice of Alleged Air Quality Violation and Order No. 2661  
Class II Air Quality Operating Permit AP1442-1396.02 (FIN A0441)

Dear Mr. Tibbals:

On September 20, 2018, the Nevada Division of Environmental Protection (NDEP) held an enforcement conference with Gopher Construction, Inc. (Gopher) to discuss supporting information regarding the draft Notice of Alleged Violation and Order (NOAV) No. 2661. As a result of that meeting, NDEP formally issued the above NOAV. See attachment.

NDEP sent NOAV No. 2661 via certified mail on October 16, 2018, notifying Gopher of its appeal rights pursuant to NRS 445B.340 and NRS 445B.360. Gopher did not appeal the NOAV. Therefore, the State Environmental Commission (SEC) will determine the appropriate penalty for the violations contained in the above referenced NOAV on **Wednesday, December 12, 2018 at 9:30 a.m. at the Laxalt Building, Second Floor, located at 401 North Carson Street, Carson City. The meeting will also be video-conferenced in Las Vegas at the Grant Sawyer Building, Room 5100, located at 555 East Washington Avenue, Las Vegas.**

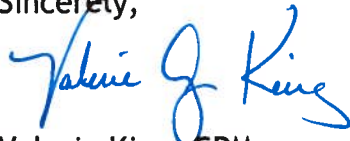
Pursuant to NRS 445B.640(1), the SEC may approve an administrative penalty of not more than \$10,000 per day per violation. During the December 12, 2018 meeting, NDEP will provide the SEC with a brief overview of the NOAVs and the recommendation for an administrative penalty of \$8,000.00. This recommended penalty was 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 Gopher.

The SEC may, without further notice, take administrative action against Gopher if the SEC determines that such administrative action is warranted after it considers NOAV No. 2661.

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 2755 47

ec: Greg Lovato, Administrator  
Jeffrey Kinder, Deputy Administrator  
Danilo Dragoni, Chief, BAQP  
Robert Whited, Supervisor, BAQP  
Jim Gans, SEC, Chairman  
Henna Rasul, SEC/DAG

# **ATTACHMENT 5:**

Regulatory Petition R186-18

**PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R186-18**

September 4, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 444.560; §2, NRS 459.485; §§3, 5 and 17, NRS 445A.425, 445A.465 and 445A.590; §4, NRS 445A.425, 445A.465 and 445A.595; §6, NRS 445A.270; §§7-12, NRS 445A.270 and 445A.295; §13, NRS 445A.135; §§14-16, NRS 445A.135 and 445A.160; §18, NRS 519A.160

A REGULATION relating to public notice; revising requirements for the publication of certain public notices of certain actions relating to the environment; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing regulations require publishing in a newspaper public notice of certain information relating to: (1) an application for a permit to operate a solid waste disposal site; (2) a proposed facility or mobile unit for the recycling of hazardous waste; (3) an application for a permit to discharge pollutants into the waters of the State; (4) certain public hearings related to water pollution control; (5) an application for a permit to construct, operate and close a mining facility; (6) a workshop held by the Division of Environmental Protection of the State Department of Conservation and Natural Resources related to a proposed water project or certain proposed actions or determinations; (7) notice of the Division's intent to grant a categorical exclusion of an applicant for a water project to prepare an environmental assessment; (8) notice of certain findings of the Division related to the potential impact of a water project; (9) the Division requiring an applicant to prepare an environmental impact statement for a proposed water project; (10) notice of the availability of a draft environmental impact statement related to a proposed water project; (11) the Division's intention to reevaluate a decision regarding a final environmental impact statement related to a water project; (12) notice of the Division's approval of a categorical exclusion of a wastewater treatment works from certain environmental review processes; (13) the Division's finding that a proposed wastewater treatment works project will not have a significant environmental impact or that an environmental impact statement related to such a project is required; (14) the draft of a permit for an underground injection well or tentative exemption for an aquifer or the Division's intent to deny a permit; and (15) the Division's intent

to issue or deny a permit for a mining exploration project or operation to be conducted on private land. (NAC 444.641, 444.84555, 445A.234, 445A.239, 445A.402, 445A.67558, 445A.67584, 445A.67589, 445A.67595, 445A.67597, 445A.67612, 445A.745, 445A.751, 445A.756, 445A.875, 519A.185) **Sections 1-7, 9-12 and 14-18** of this regulation require instead that the public notice be provided on an Internet website designed to provide general public notice unless federal law requires otherwise.

Under existing regulations, an applicant for certain projects is required to publish public notice in a newspaper of general circulation in this State for certain actions, including a public workshop on a draft environmental assessment for a proposed water project and a public hearing on a facility plan for a proposed wastewater treatment works or pollution control project. (NAC 445A.675875, 445A.738) **Sections 8 and 13** of this regulation require an applicant to instead post the public notice in a newspaper of general circulation or on an Internet website designed to provide general public notice that has been approved by the Division, unless federal law requires otherwise.

**Section 1.** NAC 444.641 is hereby amended to read as follows:

444.641 1. A solid waste management authority shall, within 45 days after receiving an application for a permit to operate a disposal site, notify the applicant as to whether the application is complete or deficient in content. A determination of completeness must be based on whether the application contains all specified documents and supporting information required by NAC 444.677, 444.705 or 444.733, as applicable. The solid waste management authority may require the submittal of any such additional documents or information as it deems necessary and may specify the period within which the documents or information must be submitted to the authority.

2. If the solid waste management authority determines that an application is complete, the authority shall evaluate the merits of the application to determine if the application is in compliance with all applicable statutes and regulations. If the solid waste management authority

determines that the application does not comply with all applicable statutes and regulations, it shall mail a notice to the applicant. The notice must specify:

- (a) Each statute or regulation with which the applicant has failed to comply;
- (b) Any documents or other information which the applicant is required to submit to the authority; and
- (c) The period within which the applicant is required to submit to the authority the documents or other information requested pursuant to paragraph (b).

3. Upon completion of the evaluation, the solid waste management authority shall prepare and issue:

- (a) A notice of intent to issue or deny the issuance of the permit. The notice must:
  - (1) Be sent to the applicant and the local governing body in the area in which the disposal site is to be located ~~{}~~ and , *unless otherwise required by federal law*, published ~~{in a newspaper of general circulation for the area in which the site is located;}~~ *on an Internet website designed to give general public notice.*
  - (2) Summarize the action to be taken by the solid waste management authority;
  - (3) State that the authority will accept comments from the general public for 30 days after the date that the notice is issued; and
  - (4) Describe the procedure for obtaining copies of the documents and comments submitted with the application.

- (b) A factual sheet which describes the proposed facility, the proposed action, the availability of the documents submitted with the application, and the procedure for public review and comment.



**Sec. 2.** NAC 444.84555 is hereby amended to read as follows:

444.84555 1. An application for a written determination that a proposed facility or mobile unit will operate as a facility for the recycling of hazardous waste or mobile unit for the recycling of hazardous waste must be accompanied by:

- (a) The name and address of the owner and operator of the facility or mobile unit;
- (b) The name and address of the property owner of the location at which a facility is proposed to be constructed;
- (c) A detailed description of the type of recycling which is proposed, including:
  - (1) The manufacturer of the equipment to be used at the facility or mobile unit;
  - (2) The nature of the recycling; and
  - (3) An explanation evidencing that the:
    - (I) Facility is a facility for the recycling of hazardous waste; or
    - (II) Mobile unit is a mobile unit for the recycling of hazardous waste;
- (d) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day;
- (e) A physical and chemical description of the type of hazardous waste to be accepted by the facility or processed by the mobile unit;
- (f) A detailed economic analysis of the recycling process to be used at the facility or by the mobile unit, including:
  - (1) The projected costs to operate the facility or mobile unit;
  - (2) The fees that would be charged per unit of volume to process waste transported to the facility or processed by the mobile unit;

(3) The projected value that would be recovered per unit of volume; and

(4) The projected costs otherwise to manage, recycle, treat or dispose of the material as a hazardous waste;

(g) A description of the markets and the uses for the products to be produced and the materials and energy to be recovered;

(h) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product; and

(i) An operating plan if the facility is a stationary facility and will recycle hazardous waste other than used antifreeze governed by NAC 444.8801 to 444.9071, inclusive, or precious metals governed by 40 C.F.R. Part 266. Such an operating plan must, without limitation, include a description of the procedures that will ensure safe operation and demonstrate compliance with:

(1) The requirements for emergency preparedness and a contingency plan specified in 40 C.F.R. Part 264, Subparts C and D;

(2) The standards for containers and tanks specified in 40 C.F.R. Part 264, Subparts I, J, AA, BB and CC; and

(3) The applicable requirements for closure and financial assurance for closure specified in 40 C.F.R. Part 264, Subparts G and H.

2. The Administrator may require the applicant to submit additional information before issuing a written determination.

3. The Administrator shall not issue a written determination unless he or she determines, based upon the application, that all the following requirements are satisfied:

(a) The facility or mobile unit will be operated as a facility or mobile unit for the recycling of hazardous waste.

(b) The recycling process has economic value. A recycling process has economic value if:

(1) The applicant shows that the material recovered from or the products or energy produced as a result of the process have value in the marketplace; and

(2) The fees that the applicant charges per unit of volume to process the material are less than or equal to the cost otherwise to recycle, manage, treat or dispose of the material as a hazardous waste, except that the fees that the applicant charges per unit of volume may be offset by the recovered unit value of the material recovered from or the products or energy produced as a result of the process.

(c) The probable beneficial environmental effect of the facility or mobile unit to the State outweighs the probable adverse environmental effect.

4. Before issuing a written determination for a facility, the Administrator shall provide for a period of public notice and comment of not less than 45 days. ~~The~~ *Unless otherwise required by federal law, the* request for public comment must be ~~noticed in a local newspaper of general circulation that is published daily or weekly~~ *published on an Internet website designed to give general public notice* and must be sent to all persons on a mailing list developed and maintained by the Administrator. A person may request to be placed on the mailing list by contacting the Administrator. The Administrator shall respond to all comments he or she receives during the period provided for comments before making his or her determination to issue or not to issue a written determination.

5. The Administrator may revoke, suspend or modify a written determination if, at any time, he or she determines that:

(a) A facility or mobile unit no longer satisfies the conditions stated in the application upon which the Administrator issued the written determination;

(b) An applicant misrepresented or failed to disclose fully a relevant fact on his or her application;

(c) The Administrator receives information that was not available at the time the Administrator issued the written determination which would have justified the imposition of different conditions at the time the determination was issued; or

(d) The standards or regulations on which the Administrator based the written determination have been changed.

6. A person may request a hearing before the Commission concerning a final decision of the Administrator to issue, deny, revoke, suspend or modify a written determination by filing a request, not more than 10 days after receiving notice from the Administrator of his or her decision, on Form 3 with the State Environmental Commission, Bryan State Office Building, 901 South Stewart Street, Carson City, Nevada 89701-5249. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the Commission requested pursuant to this section.

**Sec. 3.** NAC 445A.234 is hereby amended to read as follows:

445A.234 1. Public notice of every complete application for a discharge permit, except for a temporary permit or a permit for pretreatment discharge or the poisoning of trash fish, must be  
: ~~circulated in a manner designed to inform interested and potentially interested persons of the~~

~~proposed discharge and of the proposed determination to issue or deny a permit for the discharge. Procedures for the circulation of public notice must include at least the following:~~

(a) ~~Notice must be circulated within the geographical area of the proposed discharge by publishing in a local newspaper or periodical or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation;~~ *Unless otherwise required by federal law, published on an Internet website designed to give general public notice;* and

(b) ~~Notice must be mailed~~ *Mailed* to any person or group on the mailing list maintained by the Department or upon request.

2. The Director shall add the name of any person or group upon request to a mailing list to receive copies of notices for permit applications.

3. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application. All written comments submitted during the 30-day comment period must be retained by the Director and considered in the formulation of his or her final determinations with respect to the permit application. The period for comment may be extended at the Director's discretion.

4. The contents of the public notice of applications for permit must include at least the following:

- (a) The name, address and phone number of the Department;
- (b) The name and address of each applicant;

(c) A brief description of each applicant's activities or operations which result in the discharge described in the application, for example, municipal waste treatment plant, steel manufacturing or drainage from mining activities;

(d) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is existing or new;

(e) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;

(f) A brief description of the procedures for the formulation of final determinations including the required 30-day comment period and any other means by which interested persons may influence or comment upon those determinations; and

(g) The address and phone number of the premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to subsection 2 of NAC 445A.233, request a copy of the fact sheet and inspect and copy relevant forms and documents.

**Sec. 4.** NAC 445A.239 is hereby amended to read as follows:

445A.239 1. Public notice of any public hearing held pursuant to NAC 445A.070 to 445A.340, inclusive, must be ~~circulated~~ *provided* at least as widely as was the notice of the permit application. Notice for public hearings held under NAC 445A.238 must be:

(a) Published ~~in at least one newspaper of general circulation within the geographical area of the discharge;~~ *on an Internet website designed to give general public notice;*

(b) Sent to all persons and government agencies which received a copy of the notice or the fact sheet for the permit application;

(c) Mailed to any person or group upon request; and

(d) Given, pursuant to paragraphs (a), (b) and (c), at least 30 days in advance of the hearing.

2. The contents of the public notice of any public hearing must include at least the following:

(a) Name, address and phone number of the Department;

(b) Name and address of applicants;

(c) Name of the waterway to which the discharge is made and a short description of the location of each discharge to the waterway;

(d) A brief reference to the public notice issued for the permit application, including identification number and date of issuance;

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A concise statement of the issues raised by the persons requesting the hearing;

(h) Address and phone number of the premises at which interested persons may obtain further information, request a copy of draft permits and fact sheets and inspect and copy application forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

**Sec. 5.** NAC 445A.402 is hereby amended to read as follows:

445A.402 1. The Department shall, at least 30 days before the issuance of a permit or denial of an application:

(a) ~~{Circulate a}~~ **Provide** public notice in a manner intended to inform interested and potentially interested persons.

(b) ~~{Cause to be published in a newspaper of general circulation within the geographic area of a proposed facility, a}~~ **Publish** notice of the *Director's* intent to issue the permit or deny the application ~~{}~~ **on an Internet website designed to give general public notice.**

(c) Mail to the applicant and the landowner, if other than the applicant, members of the board of county commissioners of the county in which the facility is to be located, the Division of Minerals ~~{}~~ **of the Commission on Mineral Resources**, the Division of Water Resources of the Department, and any other person or group who so requests, written notice of the intent to issue a permit or deny the application.

2. Notice given pursuant to subsection 1 must include:

(a) The name, address and telephone number of the Department;

(b) The name and address of the applicant;

(c) The location of the proposed facility;

(d) The tentative decision of the Department to issue a permit or deny the application;

(e) A description of the procedure for:

(1) Making a final decision, which must include 30 days for interested persons to submit to the Department written comments on the tentative decision to issue a permit or deny the application; and

(2) Requesting a public hearing, if one has not been scheduled; and

(f) The specific location where interested persons may obtain further information or inspect and copy the draft permit, statement and fact sheet, and other relevant forms or documents.



**Sec. 6.** NAC 445A.67558 is hereby amended to read as follows:

445A.67558 1. The Division shall, as necessary, provide for a public participation process to provide interested or affected persons a reasonable opportunity to submit to the Division orally or in writing data, views or arguments upon proposed water projects or proposed actions or determinations of the Division.

2. Unless a hearing is required, the Division shall hold a workshop to satisfy the requirements of subsection 1.

3. The Division shall provide notice of the time and place set for the workshop not less than 15 days before the workshop, unless a longer period is required. The Division may provide such notice by:

(a) ~~{Publishing}~~ *Unless otherwise required by federal law, publishing* a single notice ~~{in a newspaper of general circulation in an area affected by the proposed action;}~~ *on an Internet website designed to give general public notice;*

(b) Mailing the notice to each interested person who requests to be on a mailing list maintained by the Division;

(c) Mailing the notice to the appropriate federal and state agencies and municipalities; or

(d) Any other means reasonably calculated to provide such notice to the general public and any person who may be affected.

4. The notice must include:

(a) A description and the location of any proposed water project;

(b) A description of any proposed action or determination of the Division;

(c) Reasons for any preliminary determination by the Division;

(d) The time that the Division will allow for public comments; and

(e) The address where the written comments may be sent.

5. The Division shall clearly indicate the date by which any written comments concerning the subject of the workshop must be received by the Division to receive consideration.

6. In any notice that it provides and at the workshop, the Division shall clearly indicate what actions, if any, may result from the workshop.

**Sec. 7.** NAC 445A.67584 is hereby amended to read as follows:

445A.67584 1. If the Division determines that a water project is eligible for a categorical exclusion pursuant to NAC 445A.67583, the Division shall provide notice of its intent to grant the categorical exclusion.

2. The notice that the Division provides pursuant to subsection 1 must be:

(a) ~~Published at least once in a newspaper of general circulation throughout the area affected;~~ *Unless otherwise required by federal law, published on an Internet website designed to give general public notice;*

(b) Provided to persons potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division;

(d) Provided to appropriate federal and state agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice must include:

- (a) A description and location of the proposed water project, or proposed action or determination of the Division;
- (b) Reasons supporting the Division's preliminary determination of eligibility of a water project for categorical exclusion;
- (c) A statement that the Division may grant a categorical exclusion and the process of environmental review shall be deemed to be complete if no comments that the Division determines to be significant are received within the time allowed for public comment;
- (d) A statement of whether the water project is being funded in whole or in part by federal funds;
- (e) The time that the Division will allow for public comment; and
- (f) The address to which written comments may be sent.

4. The period for public comment concerning the determination that a water project is eligible for categorical exclusion is 30 days after the Division has provided the notice in the manner set forth in subsection 2.

**Sec. 8.** NAC 445A.675875 is hereby amended to read as follows:

445A.675875 1. An applicant shall, as necessary, provide for a public participation process to provide interested or affected persons a reasonable opportunity to submit to the applicant, orally or in writing, data, views or arguments upon a draft environmental assessment for a proposed water project.

2. The applicant shall provide notice of the time and place set for the workshop not less than 15 days before the workshop. The applicant may provide such notice by:

- (a) Publishing a single notice ~~in~~:

(1) *In* a newspaper of general circulation in the area affected by the proposed water project; *or*

(2) *Unless otherwise required by federal law, on an Internet website designed to give general public notice that has been approved by the Division;*

(b) Mailing the notice to each interested person who requests to be on a mailing list maintained by the Division;

(c) Mailing the notice to the appropriate federal and state agencies and municipalities; or

(d) Any other means reasonably calculated to provide such notice to the general public and any person who may be affected by the proposed water project.

3. The notice must include:

(a) A description and the location of the proposed water project;

(b) The time that the applicant will allow for public comments; and

(c) The address where the written comments may be sent.

4. The minimum period for public comment concerning the draft environmental assessment for a water project is 30 days after the applicant has provided the notice in the manner set forth in subsection 2.

5. The applicant shall clearly indicate the date by which any written comments concerning the subject of the workshop must be received by the applicant to receive consideration.

**Sec. 9.** NAC 445A.67589 is hereby amended to read as follows:

445A.67589 1. If the Division determines that it intends to make a finding of no significant impact for a water project, the Division shall provide notice of its intention using the

procedures for providing notice set forth in subsection 2. The Division shall list in its finding all mitigation measures the applicant must take.

2. The notice provided pursuant to subsection 1 must be:

(a) ~~Published at least once in a newspaper of general circulation throughout the area affected;~~ *Unless otherwise required by federal law, published on an Internet website designed to give general public notice;*

(b) Provided to persons potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division;

(d) Provided to appropriate federal and state agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice must include:

(a) A description and location of the proposed water project, or proposed action or determination of the Division;

(b) Reasons supporting the Division's preliminary finding of no significant impact for the project;

(c) A statement that the Division may make a finding of no significant impact and the process of environmental review shall be deemed to be complete if no comments that the Division determines to be significant are received within the time allowed for public comment;

(d) The time that the Division will allow for public comment; and

(e) The address to which written comments may be sent.

4. The period for public comment concerning a finding of no significant impact is 30 days after the Division has provided notice in the manner set forth in subsection 2.

**Sec. 10.** NAC 445A.67595 is hereby amended to read as follows:

445A.67595 1. After the Division determines that it shall require an applicant to prepare and submit an environmental impact statement for a proposed water project, the Division shall provide notice of its intent to require the applicant to prepare an environmental impact statement.

2. The notice provided pursuant to subsection 1 must be:

(a) ~~Published at least once in a newspaper of general circulation throughout the area affected;~~ *Unless otherwise required by federal law, published on an Internet website designed to give general public notice;*

(b) Provided to persons who are potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division for the water project;

(d) Provided to appropriate federal agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice issued pursuant to subsection 1 must include, without limitation:

(a) A description and location of the proposed water project;

(b) Reasons supporting the Division's determination to require the applicant to prepare and submit an environmental impact statement for the proposed water project; and

(c) The address of the applicant so that interested persons can file comments or inquire about the time and location of any meetings which are scheduled to discuss alternatives to the proposed water project.

4. As soon as possible after the Division provides the notice required pursuant to subsection 1, the applicant shall convene a meeting of affected federal, state and local agencies, affected Indian tribes, the Division and any other interested party to determine the scope of the environmental impact statement.

5. At the meeting that the applicant convenes pursuant to subsection 4, the applicant shall:

(a) Determine the significant issues that the applicant will need to analyze in depth in the environmental impact statement;

(b) Identify the range of alternatives to his or her proposed water project that the applicant must consider;

(c) Identify any agencies that may have an interest in the environmental impact statement and the information that the applicant may need from each agency; and

(d) Discuss the method that the applicant will use to:

(1) Prepare the environmental impact statement; and

(2) Ensure public participation.

6. As soon as possible after the meeting required pursuant to subsection ~~5~~ 4, the applicant shall document as part of the environmental impact statement:

(a) The issues concerning the proposed water project that were raised at the meeting;

(b) An evaluation of any viable methods of addressing the issues raised at the meeting;

(c) Any additional issues that are raised while evaluating the issues raised at the meeting and an evaluation of any viable methods of addressing these new issues; and

(d) Any issues raised at the meeting that the applicant decides are not relevant to his or her water project.

7. The applicant shall prepare, or have prepared, a draft environmental impact statement for the water project. The applicant shall pay the costs of preparing the draft environmental impact statement.

8. If a federal agency is required by law to prepare an environmental impact statement, the Division and the applicant are not required to pay the costs of preparing the environmental impact statement and shall cooperate with the federal agency in preparing the statement.

**Sec. 11.** NAC 445A.67597 is hereby amended to read as follows:

445A.67597 1. The applicant shall:

(a) Provide two paper copies and one electronic copy of the draft environmental impact statement to the Division;

(b) Provide copies of the draft environmental impact statement to all local, state and federal agencies and public organizations that have an interest in the proposed water project; and

(c) Make copies of the draft environmental impact statement available for public review.

2. The Division shall provide notice of the availability of the draft environmental impact statement for review as soon as possible after the Division receives copies of the draft.

3. The notice provided pursuant to subsection 2 must be:



(a) ~~Published at least once in a newspaper of general circulation throughout the area affected;~~ *Unless otherwise required by federal law, published on an Internet website designed to give general public notice;*

(b) Provided to persons who are potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division for the water project;

(d) Provided to appropriate federal agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

4. The notice must include:

(a) A description and location of the proposed water project;

(b) The place at which the draft environmental impact statement may be reviewed;

(c) The time allowed for public comment concerning the draft environmental impact statement; and

(d) The address to which written comments may be sent.

5. The period for public comment concerning a draft environmental impact statement is 30 days after the Division has provided the notice in the manner set forth in subsection 3.

**Sec. 12.** NAC 445A.67612 is hereby amended to read as follows:

445A.67612 1. If 5 years or more have passed since the Division has issued its record of decision regarding a final environmental impact statement and the Division has not yet recommended approval to the Board for Financing Water Projects, the Division shall reevaluate its decision, taking into consideration current environmental conditions and public views.

2. If the Division finds, as a result of its review pursuant to subsection 1, that no significant changes have occurred since the original record of decision was made, the Division shall, before recommending approval of the water project by the Board for Financing Water Projects, issue a notice of its intention not to change the original record of decision. The Division shall:

(a) ~~publish~~ *Unless otherwise required by federal law, publish* the notice ~~at least once in a newspaper of general circulation throughout the area affected;~~ *on an Internet website designed to give general public notice;*

(b) Provide the notice to persons potentially affected by the water project, including adjacent landowners;

(c) Mail the notice to each person included on the mailing list maintained by the Division for the water project;

(d) Provide the notice to appropriate federal agencies; and

(e) Submit the notice to the state clearinghouse for review by other state and federal agencies.

3. The notice must include:

(a) A description of the proposed water project, including its location;

(b) Information regarding the availability of the original environmental impact statement;

(c) The material upon which the Division relied for the issuance of the notice and the address where that material may be reviewed;

(d) The time allowed for public comments regarding the notice; and

(e) The address where written comments may be sent.

4. The period for public comments concerning the notice of the intention of the Division not to change the original record of decision is 30 days after the Division has provided the notice in the manner set forth in subsection 2.

5. If no significant comments are received by the Division within the time prescribed in subsection 4, the Division may issue its record of decision that the process of environmental review is complete.

6. If the Division finds, as a result of its review pursuant to subsection 1 or its receipt of information pursuant to subsection 4, that additional information is necessary to supplement the original environmental assessment, the process of environmental review for the water project must comply with the procedure set forth in NAC 445A.67594 to 445A.67612, inclusive.

**Sec. 13.** NAC 445A.738 is hereby amended to read as follows:

445A.738 1. Before adopting a facility plan, an applicant for financial assistance must hold a public hearing to describe the proposed project and ensure that the concerns of the public are fully considered.

2. The time, place and subject of the public hearing must be announced conspicuously and adequately by the applicant not less than 30 days before the hearing. Copies of the facility plan must be made available for inspection by the public not less than 15 days before the hearing.

3. Notice of the hearing must be circulated within the geographical area covered by the facility plan by ~~publication~~ :

- (a) Publishing notice of the hearing in a newspaper of general circulation in the area ~~+~~ ; or*
- (b) Unless otherwise required by federal law, posting notice of the hearing on an Internet website designed to give general public notice that has been approved by the Division.*

4. Notice of the hearing must be mailed by the applicant to any person or organization included on a mailing list provided by the Division.

5. Ten copies of the facility plan must be submitted by the applicant to the state clearinghouse for review.

**Sec. 14.** NAC 445A.745 is hereby amended to read as follows:

445A.745 If a categorical exclusion is granted:

1. ~~[A]~~ *Unless otherwise required by federal law, a* notice that the exclusion is available for review must be published ~~[in a newspaper of general circulation throughout the State.]~~ *on an Internet website designed to give general public notice.*

2. The exclusion must be mailed to each person included on a mailing list maintained by the Division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public.

3. A copy of the exclusion must be submitted to the state clearinghouse for review.

**Sec. 15.** NAC 445A.751 is hereby amended to read as follows:

445A.751 1. If, after completion of the Division's review of the facility plan, it is determined that an environmental impact statement will not be required, the Division shall issue a finding of no significant impact. This finding must be based upon the Division's independent review of the preliminary environmental assessment and any other environmental information deemed necessary. Following the review by the Division, the environmental assessment must be finalized and made available for review by the public. The finding of no significant impact must list mitigation measures necessary to make the recommended alternative environmentally acceptable and must note any other environmental documents related to it.

2. ~~Notice~~ *Unless otherwise required by federal law, notice* of a finding of no significant impact for review must be published ~~in a newspaper of general circulation throughout the State.~~ *on an Internet website designed to give general public notice.*

3. Copies of a finding of no significant impact must be mailed directly to persons included on a mailing list maintained by the Division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public. An additional copy of the finding must be submitted to the state clearinghouse for review.

**Sec. 16.** NAC 445A.756 is hereby amended to read as follows:

445A.756 1. ~~Upon~~ *Unless otherwise required by federal law, upon* making a determination that an environmental impact statement is required in connection with a proposed project, the Division shall publish ~~in~~ a ~~newspaper of general circulation~~ *notice of intent to publish an environmental impact statement on an Internet website designed to give general public notice* and shall distribute ~~a~~ *the* notice of intent to publish an environmental impact statement.

2. Copies of the draft environmental impact statement must be provided to all local, state and federal agencies and public organizations having an interest in the proposed project and must be made available to the public for review. The following steps must be followed in distributing the draft ~~the~~ *environmental impact statement*:

(a) ~~A~~ *Unless otherwise required by federal law, a* notice of the availability of the draft must be published ~~in newspapers of general circulation throughout the State.~~ *on an Internet website designed to give general public notice.*

(b) The draft must be mailed directly to each person included on a mailing list maintained by the Division. The mailing list must include appropriate federal and state agencies, municipalities and interested members of the public.

(c) Copies of the draft must be submitted to the state clearinghouse for review.

**Sec. 17.** NAC 445A.875 is hereby amended to read as follows:

445A.875 A public notice for each draft of a permit for an underground injection well, tentative exemption for an aquifer, if required, or intent to deny an application for a permit must be ~~circulated~~ *provided* by the Director at least 30 days before the issuance of the permit, exemption or denial, in a manner designed to inform interested and potentially interested persons. The notice must be:

1. Published ~~in a daily newspaper of general circulation within the geographic area of the proposed injection well;~~ *on an Internet website designed to give general public notice;* and
2. Mailed to the applicant, any person or group requesting notice, the Division of Minerals, the Division of Public and Behavioral Health of the Department of Health and Human Services, the Division of Water Resources of the Department and the Administrator of the Office of Historic Preservation of the State Department of Conservation and Natural Resources.

**Sec. 18.** NAC 519A.185 is hereby amended to read as follows:

519A.185 1. Except as otherwise provided in subsection 3, the Division shall, at least 30 days before the issuance of a draft permit or a notice of intent to deny the application for a permit for an exploration project or mining operation to be conducted on privately owned land:

(a) ~~Circulate a~~ *Provide* public notice of the intent to issue a draft permit or deny the application in a manner intended to inform interested persons;

(b) ~~{Cause to be published in a newspaper of general circulation within the geographic area of a proposed exploration project or mining operation, a}~~ *Publish* notice of the intent to issue the permit or deny the application ~~{;}~~ *on an Internet website designed to give general public notice;* and

(c) Mail to the operator, landowner of record who is identified by the applicant in the application, members of the board of county commissioners of the county in which the project or operation is to be located, Division of Minerals of the Commission on Mineral Resources and any other person or group who so requests, written notice of the intent to issue a draft permit or deny the application.

2. Notice given pursuant to subsection 1 must include:

(a) The name, address and telephone number of the Division;

(b) The name and address of the operator;

(c) The location of the proposed project or operation;

(d) The tentative decision of the Division to issue a draft permit or deny the application for a permit;

(e) A description of the procedure which the Division will use to make a final decision to issue or deny the permit;

(f) The location where interested persons may obtain further information or inspect and copy the draft of the permit and other relevant forms and documents; and

(g) A statement that interested persons must submit to the Division written comments and information on the tentative decision of the Division within 30 days after the date on which the notice is published.

3. An application for a permit which has been submitted pursuant to NAC 519A.150 or 519A.155 is not subject to the notice requirements of NAC 519A.185 to 519A.210, inclusive.



# **ATTACHMENT 6:**

PowerPoint for Regulation R186-18

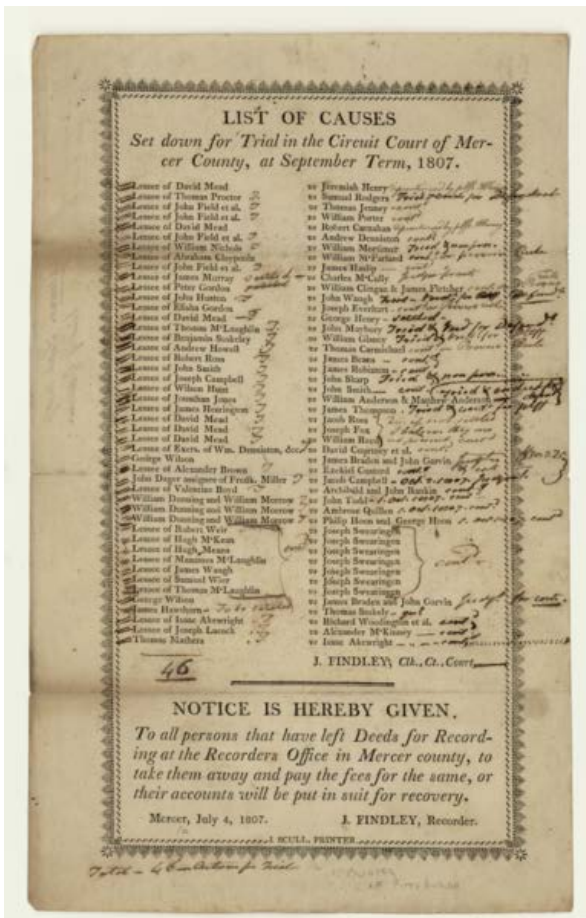


NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**



# Permanent Regulation R186-18

Greg Lovato, Administrator  
December 12, 2018



## State Environmental Commission Meeting Proposed Regulation Amendments for Public Notices



**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy  
Administrator*

**Jeffrey Kinder**  
*Deputy  
Administrator*

**Bradley Crowell**  
*Director*



Nevada Department of  
**CONSERVATION &  
NATURAL RESOURCES**

# Presentation Outline

- **Objective of Proposed Amendments**
- **Context**
  - Federal Direction
  - What are other states doing?
  - Other Nevada Agency Processes
- **Current Regulations – Effectiveness**
- **Changes Requested**
- **Concerns and Questions**
- **Workshop Comment Summary**
- **Enhancements to Increase Public Awareness**
- **Conclusion – Air Program Experience**



# Objective of Proposed Amendments

- **Remove requirement to publish public notices in newspapers, due to:**
  - Inefficient use of public resources
  - Unnecessary delays for projects
- **NDEP proposes to use its website for public notices**
  - To the extent permitted by federal law and regulation
  - Currently implemented in the air program
- **This would apply to proposed decisions for:**
  - Mining and Water Pollution Control Permits (except NPDES)
  - Solid Waste Landfill and Hazardous Waste Recycling Written Determinations
  - Water Infrastructure Project Environmental Review and Priority Lists

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*Director*



# Context – Federal Direction



- **Clean Air Act** (Nov 2016) – EPA final rule removed requirement to publish public notice of draft air permit in newspaper
- **Clean Water Act** (May 2016) – EPA Proposed NPDES Phase 1 Rule to allow for web based notification in lieu of newspaper
- **EPA’s Reasoning**
  - Laws require an opportunity for public participation be provided but do not specify method
  - Rules originally issued in 1980s and 1990s prior to electronic media age
  - Electronic media increasing, print circulation declining
  - Websites more appropriate for disseminating information to public



# Context – What are other States doing?

**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy Administrator*

**Jeffrey Kinder**  
*Deputy Administrator*

- **State environmental agencies contacted**

- Utah
- New Mexico
- Idaho
- Oregon
- Arizona



- **Strong interest - Attempts have been made to move away from newspaper notices**
- **Pushback from press organizations**
- **Concerns about rural communities with limited internet access**

**Bradley Crowell**  
*Director*



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# Context – Other Nevada Agency Processes

**Greg Lovato**  
Administrator

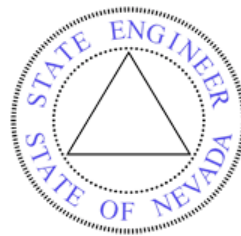
**Jennifer Carr**  
Deputy  
Administrator

**Jeffrey Kinder**  
Deputy  
Administrator

- **Newspaper Notices Required**

- Department of Wildlife
  - *Fishing/Hunting Seasons, Bag Limits/Hours*
- Division of Water Resources
  - *Water Rights*
- Division of Minerals
  - *Mine claim sales and hearings but NOT permit decisions for oil and gas, geothermal resources or dissolved mineral resource exploration*

**Bradley Crowell**  
Director



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# Context – Other Nevada Agency Processes

**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy Administrator*

**Jeffrey Kinder**  
*Deputy Administrator*

- **The public routinely becomes aware of projects**

- By Planning/County Commission (Private Land)
- By BLM (Public Land)
- Well before NDEP Proposed Permit Actions

- **Example – Order of notices for Long Canyon Mine (Elko County)**



1. Notice of Intent to Prepare EIS
2. Notice of Availability on Draft EIS
3. Notice of Availability for Final EIS
4. NDEP Proposed Permit Decision

**Bradley Crowell**  
*Director*



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# Effectiveness of Current Regulations

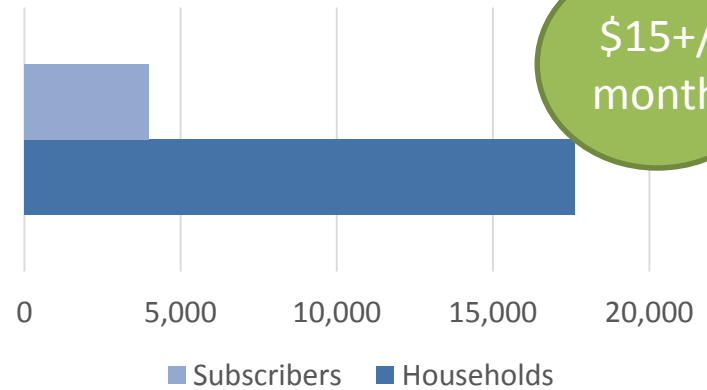
**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy Administrator*

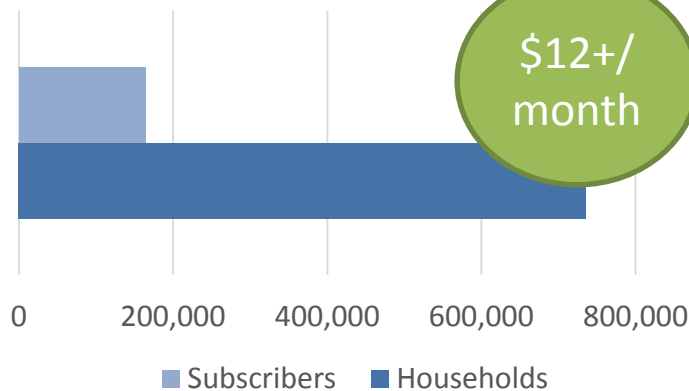
**Jeffrey Kinder**  
*Deputy Administrator*

- **Households reached ~22%**
- **Publication frequency ↓**
- **Print Circulation ↓**

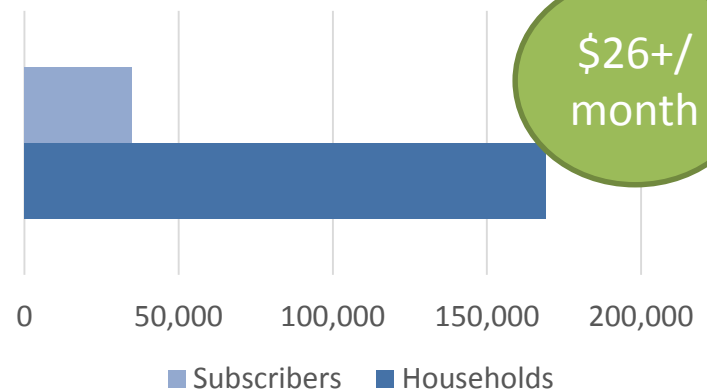
### Elko Daily Free Press



### Las Vegas Review-Journal



### Reno Gazette Journal



**Bradley Crowell**  
*Director*



Nevada Department of  
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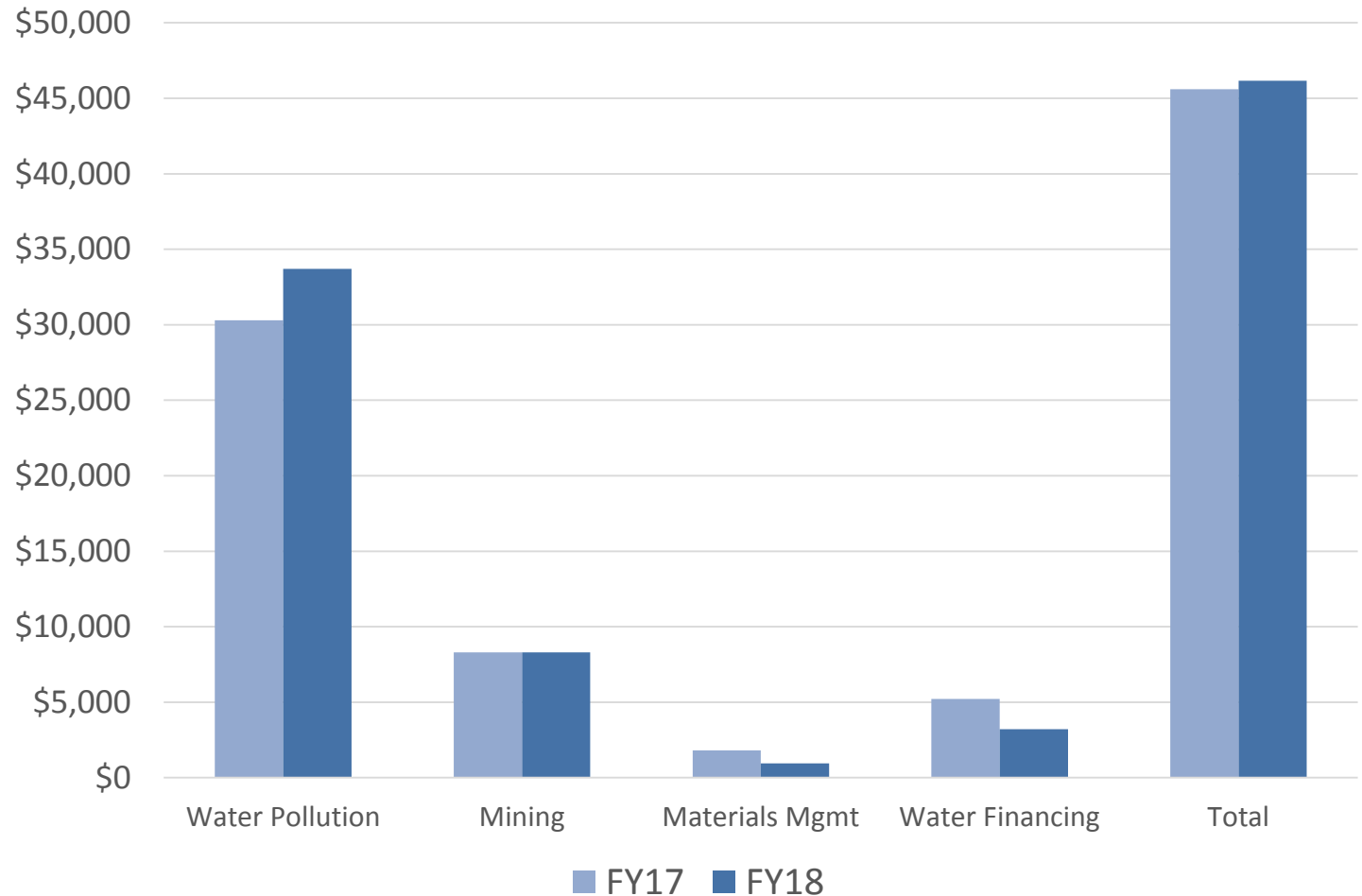
Data Sources: Household data from Census.gov. Subscriber data obtained directly from newspaper ad departments. Print publication frequency trend from Las Vegas Sun at <https://lasvegassun.com/news/2018/jul/03/northern-nevada-area-newspapers-reducing-print-ed/>. Circulation trend from Pew Research Center State of the News Media <http://www.pewresearch.org/topics/state-of-the-news-media/>. Initial print monthly subscription rates from newspaper websites accessed 11/28/2018.



# Effectiveness of Current Regulations

## NDEP Costs for Publication (July 2016 to June 2018)

Includes Publication (87%) and NDEP Staff Time (13%)



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Nevada Department of  
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# Changes Requested

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**Jeffrey Kinder**  
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*Director*



Nevada Department of  
**CONSERVATION &  
NATURAL RESOURCES**

Bureau	Program	NAC	LCB Draft Page
BMRR	Mining Water Pollution Control Permits	445A.402	10
	Mining Reclamation Permits	519A.185	25
BWPC	Water Pollution Control Discharge Permits*	445A.234	7
	Public Hearing Notice	445A.239	9
	Underground Injection Control Permits	445A.875	25
BSMM	Solid Waste Landfill Permits	444.641	2
	Hazardous Waste Recycling Written Determination	444.84555	4
BAS/ OFA	Water Project Priority List	445A.67558	12
	Water Project NEPA Notices	445A.67584, 67589, 67595, 67597, 67612, 745, 751, 756	13, 15, 17, 19, 20, 23, 24
	Water Project Applicant Notices	445A.675875, 445A.738	14, 22



**Greg Lovato**  
*Administrator*

**Jennifer Carr**  
*Deputy  
Administrator*

**Jeffrey Kinder**  
*Deputy  
Administrator*

**Bradley Crowell**  
*Director*



# Changes Requested

**Remove reference to newspaper publishing**

**Replace with:**

“Unless otherwise required by federal law, published on an Internet website designed to give general public notice.”



# Biggest Concern – Internet Access

Dec 2016 Data Presented from Feb 2018 FCC **Broadband** Deployment Report

State, County	Population	% of Pop. with Fixed 25 Mbps/3 Mbps	% of Pop. with Mobile 5 Mbps /1 Mbps
Nevada	2,937,297	96.00%	99.60%
Carson City	54,991	98.70%	100.00%
Churchill County	24,269	88.20%	99.30%
Clark County	2,153,694	98.40%	100.00%
Douglas County	47,991	94.40%	100.00%
Elko County	51,912	79.00%	97.40%
Esmeralda County	791	68.30%	82.60%
Eureka County	1,911	28.80%	98.30%
Humboldt County	16,778	1.70%	97.40%
Lander County	5,693	5.10%	94.60%
Lincoln County	5,041	81.40%	24.80%
Lyon County	53,089	73.60%	99.80%
Mineral County	4,450	80.10%	89.80%
Nye County	43,511	94.20%	98.20%
Pershing County	6,569	27.00%	98.70%
Storey County	4,066	64.60%	100.00%
Washoe County	452,872	97.40%	99.40%
White Pine County	9,669	47.10%	94.80%

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# Voiced Concerns

- **Public should not have to take action to receive notification.** (Buying newspaper requires action.)
- **Are other states doing this?** (No, but they are trying to.)
- **Should be prominent on NDEP website** (Yes.)
- **County Commissioners should receive all public notices** (Yes.)
- **Due process litigation**
  - (LCB and Legislative Commission have approved this approach for air. Consistency for all NDEP Programs addresses due process concerns.)
  - (Not conferring property right.)
  - (Consistent with NRS/NAC 233B Administrative Procedure Act for noticing regulatory petitions.)
- **Proof of Internet Publication and no after the fact alteration**
  - (Print publication with date, keep hard copy.)
  - (E-mail press release from Public Information Officer.)



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# Workshop Comment Summary

- **Workshop held November 1 in Carson City with videoconferencing to Elko, Reno, Las Vegas, Ely, Fallon, Gardnerville, Goldfield, Hawthorne, Lovelock, and Yerington**
- **Attendees in Carson City, Las Vegas, and Reno - 13**
- **Attendee organizations**
  - Kappes Cassidy
  - Gold Resources Corp Nevada
  - NV Rural Water Resources Association
  - NV Mining Association
  - Clark County
  - Southern NV Health District
  - Mission Support and Technical Services, Inc.
  - NV Energy
  - Nellis AFB
  - VDM Metals
  - Law Office of J Craig Demetras



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# Workshop Comment Summary

- **Supportive of Changes**
  - NV Mining Association
  - NV Rural Water Resources Association
  - Southern NV Health District
- **No negative comments received at workshop**
- **Will this affect existing projects?**
  - **Yes** - If those projects have future proposed permit decisions, renewals or permit modifications that require public notice
  - **No** – If no future permit decisions.





# Enhancements to Increase Public Awareness

- **NDEP Website for Public Notices**

- Prominent
- Searchable/Customizable
- Notices Stay up for Entire Comment Period
- Additional Information and Links Available
- ADA compliant
- Readable!

- **Listservs (mass e-mail list)**

- **Press Releases to area newspapers, radio and television stations**

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NEVADA DIVISION OF  
**ENVIRONMENTAL PROTECTION**

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## News and Public Notices

**DATE**  
November 28, 2018

### Notice of Decision - BMRR - Leeville Infiltration Project

BMRR - Notice of Decision - Issue renew Water Pollution Control Permit NEV2002 to Leeville Infiltration Corporation.

[Read More](#)

**DATE**  
November 27, 2018

### Notice of Decision - BMRR - Parker Brothers Mine

BMRR - Notice of Decision - Issue renew Water Pollution Control Permit NEV2012112 to Zephyr Minerals, Inc.

All Categories

Any Location

- Carson City
- Churchill County
- Clark County
- Dayton
- Elko
- Elko County
- Ely
- Esmeralda County

Stay up-to-date on NDEP programs by joining an email list

[GET STARTED](#)

NAVIGATE

CONTACT US

PARTNER AGENCIES

LEGAL



# Enhancements to Increase Public Awareness

- **Notice to County Commission**
- **Direct Mailing Lists**
  - Available on Request
  - Initiated by NDEP for groundwater discharge that may affect water levels in wells
- **Criteria for **Supplemental** Newspaper Advertising**
  - Complaint History
  - Past News Stories
  - Local Public Request
  - Potential Human Exposure to Contamination

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# Transition from Newspaper Notice

- **Provide notice of change twice in newspapers statewide of change coming in 6 months**
  - How to access direct mail, e-mail list, website
- **For counties with fixed access below 90% every 6 months thereafter**

County	% of Pop. with Fixed 25 Mbps/3 Mbps
Churchill County	88.20%
Elko County	79.00%
Esmeralda County	68.30%
Eureka County	28.80%
Humboldt County	1.70%
Lander County	5.10%
Lincoln County	81.40%
Lyon County	73.60%
Mineral County	80.10%
Pershing County	27.00%
Storey County	64.60%
White Pine County	47.10%

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# Air Program Experience

The Air Program begin implementing eNotice and eAccess on May 3, 2017 following approval by the SEC.

Since that time, 493 permitting actions have been issued and of those 78 have required public notice.

Permitting Action	# of Actions	# of Public Notice
Class I (Major) Permitting	39	15
Class II (Minor) Permitting	230	29
Class II (Minor) Permitting – General Permits	137	20
Nevada Mercury Control Program Permitting	24	10
Chemical Accident Prevention Program Permitting	4	4
Administrative Permitting	59	0



# Air Program Experience – Cost Savings

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Permitting Action	# of Public Notice	Cost Savings <sup>1</sup>
Class I (Major) Permitting	15	\$5,865
Class II (Minor) Permitting	29	*
Class II (Minor) Permitting – General Permits	20	\$22,820
Nevada Mercury Control Program Permitting	10	\$3,135
Chemical Accident Prevention Program Permitting	4	\$2,020
TOTAL		\$33,840

<sup>1</sup>Costs shown above are for publication only, do not include staff time or resources.

- **Class II Permitting**

- No cost savings associated with Class II permitting.
- Previously only required a physical copy of the draft operating permit be provided to the local library.
- Now noticed on the NDEP website and a press release is provided to the local newspaper.

# **ATTACHMENT 7:**

Comment Letters

**Statement by Allen Biaggi, Nevada Mining Association  
To the State Environmental Commission  
Public Notice Provisions  
December 12, 2018**

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

For background, the NvMA was first organized in 1913 and currently consists of more than 420 companies that comprise Nevada's mining industry. These member companies are engaged across the broad spectrum of the industry in Nevada, from exploration and discovery, to development and construction, to operation and production, to closure and reclamation. NvMA provides a voice for Nevada's mining industry in federal, state, and local policy matters, community engagement, public education, and workforce development.

This is the third time I have provided input to you on this particular issue, and like my previous comments, the Association strongly supports the proposed regulatory changes.

Nevada's mining industry is fully supportive of an open and transparent permitting process. Experience has shown time and time again that the more public outreach and involvement, the better and more timely the project. Working with the public is imbedded in mining's culture, be it through NDEP's air and water permitting processes, or because mining operations are typically located on public lands, the federal government's NEPA process and the development of Environmental Assessments and Environmental Impact Statements. We applaud the NDEP moving forward with these requirements and acknowledging the way people get their information in the 21<sup>st</sup> century.

An important component of our constituency is the people of rural Nevada where most mining activity occurs. We are sensitive to their needs and interests and want to make sure they are fully aware and informed of activities that may impact them. The current means of notification is not the most effective or efficient in accomplishing this.

The NDEP's public outreach regulations were initially written in the early to mid-1970's at a time when newspapers were flourishing and were the primary means of disseminating information. Nearly every town in Nevada had a local paper; it was published on a frequent basis, was inexpensive, and widely read by the community.

Contrast that with today where newspaper readership is down, subscription costs are high, papers are going out of business with alarming frequency (especially in rural areas), and those remaining in business are reducing publication. The best



example is here in Carson City, the State Capitol, where the Nevada Appeal is published just twice per week.

The Internet and digital media is now the information source of choice. The proposal before you today updates the regulations to reflect the ways that news, information and notices to the public can be provided cheaper, more effectively and more efficiently through on-line sources, websites and email.

From a business perspective, time is money and uncertainty is highly unwelcome. NDEP's permits are often critical paths for a mine, and without an air or water permit operations cannot begin, delaying projects that required millions or even billions of dollars in investments. Delays of days and weeks have occurred due to errors and missed publication deadlines resulting in loss of production and increases in cost.

There is also an NDEP monetary component. The agency spends tens of thousands of dollars yearly on notices that reach a miniscule portion of the public in Nevada. Mining pays substantial fees to NDEP every year, which in turn supports 100% of the Bureau of Mining Regulation and Reclamation as well as portions of the air and water bureaus. From public policy and environmental protection perspectives, it would provide greater value to use those funds for more inspectors, permit writers or environmental improvement projects.

This Commission has made a trial run at digital notification in the air programs with great success. Results have clearly shown that public outreach has been enhanced, permitting processes improved, delays reduced and efficiencies realized. The proposed regulation capitalizes on these program improvements by applying them agency wide.

I was pleased to attend the NDEP's workshop on these regulations, which was simulcast to communities around the state. Like the goal of these proposed regulations, the agency used 21<sup>st</sup> century technologies to gather public awareness and input. The effort was more efficient and cost effective and reached out to many more people than the traditional workshops. It is also important to note that through the workshop no one in the state spoke in opposition to these regulations.

In closing, we thank you for your consideration of these proposed changes. For business and industry, they will streamline permitting processes and lessen time delays and uncertainties. For the agency, the proposed regulations will result in significant efficiencies, will save money, and most importantly, provide transparency and enhance NDEP's public outreach process.

I'm happy to answer any questions you may have.

## Greg Lovato

---

**From:** Paul Bottari <paul@bottarirealty.com>  
**Sent:** Tuesday, December 4, 2018 5:12 PM  
**To:** Greg Lovato  
**Cc:** 'Marcella'; marissa@lostrarealtyelko.com  
**Subject:** RE: Comment Regarding Regulatory Petition R186-18

Greg: I shared your comments with Marcella Syme, President of ECAR, and in answer to your question "Yes" this is what we were hoping for and please do proceed according to your suggestions. We appreciate your foresight and thoughtfulness. Sincerely, Paul Bottari

**From:** Greg Lovato <glovato@ndep.nv.gov>  
**Sent:** Friday, November 30, 2018 12:21 PM  
**To:** 'paul@bottarirealty.com' <paul@bottarirealty.com>  
**Subject:** Comment Regarding Regulatory Petition R186-18

Mr. Bottari,

Thanks for your time on the phone today. As we discussed today, I understand that you are the public policy chair for the Elko County Association of Realtors (ECAR) and are in communication and alignment with Marcella Symes and her comments on behalf of ECAR regarding this proposed regulation change (attached letter dated November 20, 2018).

Although the letter we received from ECAR references "public notification for regulations and change of regulation", I clarified today that this proposed regulation change generally relates to proposed permit actions and not regulation changes. You indicated that ECAR comment still stands, in that the community of property owners you work with is also interested in receiving notice of permits proposed to be issued to their neighboring property owners. You also indicated that it would be appropriate to phase in how we notice the public of proposed permit decisions.

Based on our discussion I am considering recommending that we alert the public to this future change in printed public notice ads over a period of 6 months before switching to either direct mail, e-mail or internet and away from newspaper public notice ads.

Please let me know if this makes sense and addresses ECAR's concerns and if you have any other suggestions or comments. Also feel free to call me to discuss.

If we could receive a response from you before by December 10 we would appreciate it greatly as the State Environmental Commission Hearing is scheduled for December 12.

Sincerely,

Greg Lovato, Administrator  
NV Division of Environmental Protection  
P: 775-687-9373  
E: [glovato@ndep.nv.gov](mailto:glovato@ndep.nv.gov)





**Clark County  
Water Reclamation  
DISTRICT**

December 11, 2018

Valerie King  
Admin Services Chief, SEC  
Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001  
Carson City, NV 89701

Re: Support for R186-18: Nevada Division of Environmental Protection (NDEP) - Bureau of Mining Regulation and Reclamation, Bureau of Water Pollution Control, Bureau of Sustainable Materials Management, and Bureau of Administrative Services proposed amendments pertaining to Nevada Administrative Code (NAC) Chapters 444, 445A and 519A.

Dear Ms. King:

As we are unable to appear in person at the State Environmental Commission (SEC) Hearing on Wednesday December 12, 2018 in Carson City, Nevada at which the above referenced matter will be discussed, this letter expresses the support of the Clark County Water Reclamation District (District) for R186-18.

By amending regulations applicable to NDEP to change newspaper notices to e-notices, R186-18 will make it much easier for the District, our ratepayers, and stakeholders to follow NDEP actions. R186-18 will improve communications and eliminate the outdated outreach practice of using legal notices that get buried in fine print at the back of a newspaper. Specifically, we are excited about the internet website designed to allow continuous access to the public notices as opposed to a single day newspaper publication.

Please contact me at (702) 668-8455 and/or [dfischer@cleanwaterteam.com](mailto:dfischer@cleanwaterteam.com) if you wish to discuss this matter.

Sincerely,

 12/11/18

Daniel C. Fischer  
Deputy General Manager

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[cleanwaterteam.com](http://cleanwaterteam.com)

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NOV 20 2018  
ENVIRONMENTAL PROTECTION



557 W. Silver Street, Suite 201A  
Elko, NV 89801

State Environmental Commission  
C/O Valerie King, Executive Secretary  
901 South Stewart Street  
Carson City, Nevada 89701-5249

RE: Proposed Regulation R186-18

Chairman Gans and Commissioners:

On behalf of the Elko County Association of REALTORS® I would like to offer the following comments regarding this proposed regulation which would change current practice of public notification for regulations and change of regulation from being printed in the local newspapers to an Internet website designed to provide public notice.

First let me say that in the completing the course of our business selling, buying and managing, real estate we deal with many different personalities and age groups of people. Many of the owners of property who can and will be affected by regulations you oversee are older people who still don't use the Internet or do so minimally. These folks still read newspapers and still read public notices. For this reason, we suggest that the change in notice be phased in over a long enough period to allow constructive notice to these folks that they should be making provision to receive notice through modern technology and methods. The Commission should be putting out news releases to inform them of such so that they will know what to expect and prepare for it before it changes.

Sincerely,

Marcella Symes, President  
Elko County Association of REALTORS®  
557 W. Silver St. STE 201A  
Elko, Nevada 89807



State of Nevada  
Department of Conservation and Natural Resources  
State Environmental Commission  
901 South Stewart Street, Suite 4001  
Carson City, NV 89701

November 27, 2018

RE: NDEP Regulatory Petition #P2018-02

Dear Chairman Gans:

Nevada Rural Water Association wishes to lend support to the NDEP Petition to move from newspaper notification to using electronic communications for certain notifications. We recognize that the ways in which people communicate continues to change, and that regulations need to keep pace with these changes.

Membership in the NvRWA is drawn from among the many water and wastewater systems in Nevada, from campgrounds and small businesses serving water to the public, to the General Improvement Districts and the largest municipalities. I am confident that our membership will by-and-large welcome this step in the transition to electronic communications.

Respectfully yours,

Bob Foerster  
Executive Director