





NEVADA STATE ENVIRONMENTAL COMMISSION

SEC Regulatory Meeting

 TIME	 LOCATION
December 9, 2020 9:00 A.M.	In accordance with Governor Sisolak's Emergency Directive 006; Subsection 1, this hearing was conducted via Lifesize. https://call.lifesizecloud.com/3886496

SEC members present:

Chair, Tom Porta
Vice Chair, Jason King
Commissioner Kacey KC
Commissioner Kathryn Landreth
Commissioner Adam Sullivan
Commissioner Mike Visher
Commissioner Mark Turner
Commissioner Tony Wasley

SEC members absent:

Commissioner Jennifer Ott
Commissioner Jocelyn Torres

Public present:

Gay McCleary
Jordan
Chad Meyers
Janelle Boelter
Kyle Davis
Nate Carrasco
Meg
Allen Biaggi
Ken Albright
Converse Consultants
Lee Plemel
Jeremy Clarke
Aaron
Hope Sullivan
Robert Matthews

SEC staff present:

Valerie King, executive secretary
Henna Rasul, legal counsel

NDEP staff present

Greg Lovato
Jennifer Carr
Rick Perdomo
Danilo Dragoni
Katrina Pascual
Rebecca Bodner
Jessica Lunz
Kristen Burke
Danyel Soulier
Travis Osterhout
Jeff Collins
David Dragon
Lisa Kremer
Peter Handy
Kim Valdez
Ashley Taylor
Mark Turner
Andrea Seifert
Jeffrey Kinder
Matt McDaniel
Nathan Rash
Liz Kingsland
Sig Jaunarajs
Andrew Tucker
Linh Kieu

In these minutes:

- [Call to order, roll call, establish quorum](#)
- [Public comments](#)
- [Election of vice chair of the commission](#)
- [Approval of July 1, 2020 meeting minutes](#)
- [Permanent Regulatory Petition R126-19: Enhanced administrative process for NDEP certification programs](#)
- [Cemex Construction Materials Pacific, LLC - NOAV No. 2788](#)
- [Tahoe Western Asphalt, LLC - NOAV Nos. 2783, 2784, & 2786](#)
- [Administrator's briefing to the commission](#)
- [Public comments](#)

Begin Summary Minutes

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

The meeting was called to order at 9:00 a.m. by Chair Tom Porta. Executive Secretary Valerie King confirmed that the hearing was properly noticed and that a quorum was present. Chair Porta recognized new members Adam Sullivan and Jason King.

2) Public comments

Robert Matthews stated he would wait to speak until after his counsel, Jeremy Clarke, had spoken. There were no other public comments.

3) Election of vice chair of the commission

Valerie King stated she had received three nominations to elect Commissioner King as vice chair. There were no other nominations. Chair Tom Porta asked if any other members were interested in the position. There were none.

Motion: Approve Commissioner King as the vice chair of the commission

By: Commissioner Turner

Second: Commissioner Landreth

Vote: Motion passed unanimously

4) Approval of July 1, 2020 meeting minutes (Action item)

There were a few minor typographical corrections made to the July meeting minutes.

Commissioner Kathryn Landreth said Brad Crowell was listed as a member of the public. She said he should be listed as director of the Department of Conservation and Natural Resources.

Commissioner Mike Visser noted David Von Seggren's name was misspelled throughout the minutes as David Von Seggre.

Motion: Approve the July 1, 2020 meeting minutes

By: Commissioner Landreth

Second: Commissioner Turner

Vote: Motion passed unanimously

Regulatory Petitions

5) Permanent Regulatory Petition R126-19: Enhancement of administrative process for NDEP certification programs (Action time)

Commissioner Kacey KC wanted to put on the record that her husband is a wastewater operator at a small plant. She stated it would not bias her vote.

Kirk Goebel, of Converse Consultants, stated he was not normally a proponent of additional regulation, but that he supported these specific regulations. He added they are unique to Nevada and add credibility to the program.

NDEP Deputy Administrator Jennifer Carr presented the petition. She explained the petition addresses disciplinary procedures for those certified by any of the NDEP's three certification programs.

Ms. Carr added the three certification programs are professional level certifications that must be held for operators to do their job. The Bureau of Safe Drinking Water (BSDW) certifies operators in water distribution or water treatment; the Bureau of Water Pollution Control (BWPC) certifies wastewater treatment operators in domestic sewage; and the Bureau of Corrective Actions (BCA) certifies environmental managers, underground storage tank handlers, and underground storage tank testers.

Ms. Carr stated in recent years, NDEP has taken disciplinary action against several operators. These include a water operator falsifying his continuing education requirement certificates, as well as a wastewater treatment operator allegedly cheating on an exam to obtain a higher level of certification. In the latter case, Ms. Carr explained BWPC did not have a clear path for disciplinary action despite having the authority to do so. She noted an appeal hearing for that case instigated the changes to the disciplinary process.

Ms. Carr added the regulations would apply to all three certification programs. She stated the grounds for disciplinary action had been shared with the regulated community.

Ms. Carr outlined the regulations, explaining that if there are grounds for disciplinary action, NDEP would issue a Notice of Intent to Take Disciplinary Action. The operator would have 10 business days to demonstrate compliance. If the response is adequate, no disciplinary action is taken; if the response is inadequate, a hearing is called. Ms. Carr added if public health is at immediate risk, NDEP could summarily suspend an operator's certification and call for a hearing. An operator who commits the same infraction within a two-year period would also prompt a hearing.

Ms. Carr stated the hearing would be conducted by a hearing officer appointed by the NDEP administrator. Once the hearing is conducted, the hearing officer gives their recommendation to NDEP within 30 days of the hearing. The administrator has 45 days from the hearing date to make a decision. Ms. Carr noted potential outcomes include revoking or suspending an operator's certification, or placing them on probation. The decision is final 30 days after the decision, unless it is appealed.

Ms. Carr added the operator must provide notice to their employer of the decision and the date it takes effect. The operator may still lawfully practice until that date. Ms. Carr clarified that the disciplinary action is only for the operator's certification through NDEP.

Vice Chair Jason King asked why an operator would not have a chance to respond to a Notice of Intent to Take Disciplinary Action for the same violation within a two-year period.

Ms. Carr stated NDEP would not enter the disciplinary processes lightly. If an operator commits the same violation within two years, they did not learn their lesson. The case would then move right into the hearing process.

Commissioner Kathryn Landreth asked if there was a way to ensure an operator notifies their employer when their certificate is suspended or revoked.

Ms. Carr stated it was not written into the regulations. She ensured the employer would be notified. She added if an operator does not inform their employer, they would be in violation of the law.

Chair Tom Porta asked if other agencies NDEP reviewed also did not give a person a chance to respond to a second violation. He cited concerns with due process.

NDEP Deputy Administrator Rick Perdomo stated it is unique to the division. He added the decision would just eliminate the informal process, and that the hearing would give the operator an opportunity to respond and potentially appeal.

Ms. Carr continued with the presentation. She stated at a hearing, NDEP would state its authority, the facts of the case, and its list of witnesses. This information is attached to a Hearing Notice provided to the operator. This gives the operator a chance to review evidence supporting the disciplinary action. Ms. Carr added the operator would also likely have counsel representing them. The operator can provide NDEP with evidence and witnesses at least five days before the hearing. The hearing officer can exclude any information deemed to be untimely.

Ms. Carr stated pre-hearing motions will be filed with the hearing officer at least 10 business days prior to the hearing. Responses to pre-hearing motions are filed three days before the hearing. The hearing officer has additional authority to order both parties to file briefs. Ms. Carr added the regulations also include procedural items outlining how the hearing will be conducted.

Ms. Carr reiterated the hearing officer gives NDEP a recommendation within 30 days of the hearing. NDEP will make a decision on the recommendation within 45 days. The operator can then appeal the decision. Ms. Carr stated an appeal to the SEC must be filed within 10 days after receiving notice of the decision. The appeal must be specific on the point of law or finding of fact in question. Ms. Carr explained this would make the appeal hearing brief, adding that oral arguments would be also limited to 15 minutes. The SEC could affirm, reverse, or modify the decision. The SEC decision is also eligible for judicial review.

Vice Chair King asked why oral argument must be limited to 15 minutes.

Ms. Carr answered that NDEP wants to keep appeal hearings brief, stating a previous case went on for 8 to 10 hours. She added the intent is to have information narrowed down in the case.

Mr. Perdomo added NDEP wants to be judicious with commissioners' time. He stated the grounds for appeal are confined to the record. He clarified that if the SEC had questions, oral arguments could go beyond 15 minutes.

Commissioner Landreth asked if an appeal hearing would have a panel of commissioners or the full commission.

Ms. Carr answered it would be a panel of three commissioners.

Chair Porta stated he shared concerns about having the minutes of an argument being placed in regulation. He advised that whoever chairs that panel should set the rules.

Commissioner Landreth stated the regulation language could say oral arguments will last 15 minutes, but can be extended at the discretion of the commission.

Commissioner KC stated if the 15 minutes were strictly for arguing an issue that was on the record, it would be sufficient. She also indicated that the SEC could be accused of being biased if it allowed some to argue for longer than 15 minutes and not others.

Ms. Carr continued the presentation. She said NDEP Administrator Greg Lovato expressed concern that disciplining those certified under the BCA program may not resolve the issue, as certain actions may be outside the scope of certified environmental managers or tank handlers. Ms. Carr said the regulations now state certified individuals will not necessarily be held responsible for actions beyond their control.

Ms. Carr stated the added provisions also allow an operator to contest their certification level with NDEP if they feel it does not represent their experience. If the request is taken to the NDEP administrator, the administrator's decision on the certification is final.

Ms. Carr stated the draft petition was discussed in three in-person workshops in February 2020. The workshops were conducted in Elko, Carson City, and Las Vegas. A total of 30 people attended the workshops, including 15 people in Elko, eight people in Carson City, and seven people in Las Vegas.

Ms. Carr stated one person in Elko expressed concern about the severity of a summary suspension. Ms. Carr explained to the participant that the investigation prior to the summary suspension would be thorough and carefully considered. She said the participant seemed satisfied with the response.

Ms. Carr stated another participant asked if an operator who lost their certification would be unable to work at another system. Ms. Carr answered that was accurate, adding that programs were in place to help systems find another operator.

Ms. Carr stated another participant in Carson City asked what recourse NDEP has against a company working on a project without a certification. Ms. Carr answered that NDEP would work to educate the company or refer to the Attorney General's Office.

Ms. Carr added a virtual workshop was conducted in December 2020. She stated the feedback was supportive.

Ms. Carr stated a small business impact statement was also presented at the workshops. No comments were received about the statement.

Chair Porta asked if the process would be a part of the operator training program.

Ms. Carr stated she is considering creating a class to help educate operators.

Chair Porta then asked if 45 days was a long time for an operator to wait for a hearing after having their certificate summarily suspended.

Ms. Carr stated it could not be done sooner due to processes like the 30-day notice requirement.

Mr. Perdomo added 45 days is the maximum allowable time to schedule a hearing, and that the SEC could hold the hearing sooner.

Chair Porta asked if the hearing was open to the public.

Ms. Carr answered that it was not. She clarified that the record could be open unless the operator wants to have it confidential.

Chair Porta asked for comments from the public. There were none.

Vice Chair King asked if substantive changes to the petition would have to be reviewed by the Legislative Counsel Bureau.

Ms. Carr stated that was correct.

Commissioner Mike Visher stated the Nevada Administrative Code allowed the SEC to set its own time limits for appeal hearings. He suggested leaving the time limit out of the regulation.

Ms. Carr responded that the proposed provisions would supersede the appeal processes currently in regulation.

Chair Porta asked for comments from commissioners. There were none. He then asked for a motion.

Motion: Approve and adopt Permanent Regulatory Petition R126-19 as proposed

By: Vice Chair King

Second: Commissioner Visher

Vote: Passed unanimously

Air Penalties

6) Cemex Construction Materials Pacific, LLC - NOAV No. 2788 (Action item)

NDEP Bureau of Air Quality Planning (BAQP) Chief Danilo Dragoni presented the penalty for Cemex Construction Materials. He said the facility operates a processing plant near Interstate 80 east of Sparks.

Mr. Dragoni stated on February 25, 2020, an NDEP compliance officer observed dust coming from the facility. The next day, the compliance officer found 14 emission units were not operating with required water sprays to abate the dust.

Mr. Dragoni stated a draft notice for the alleged violation was issued April 29, 2020. At an enforcement conference on May 18, Cemex did not dismiss the allegations. The final NOAV for the violation was issued June 3, 2020.

Mr. Dragoni explained that the facility is in a hydrographic area that has additional air quality standards. He stated NDEP is careful about communicating these stricter standards to businesses in these areas.

BAQP Enforcement Branch Supervisor Andrew Tucker stated the location of the facility was not taken into account when calculating the penalty. He stated the penalty recommendations were calculated using the penalty matrix. The base penalty for failure to maintain controls source is \$600. The penalty was modified based on the 14 non-compliant emission units. Mr. Tucker added there were penalty adjustments for the facility having a prior violation within the last five years. That meant a modifier of 5 percent for prior violations and 200 percent for a similar violation. Mr. Tucker calculated that the total gravity fine of \$8,400, multiplied by 205 percent, was \$17,220. He concluded by recommending a penalty of \$8,400 for the total gravity fine, plus \$17,220 for the adjustment, for a total penalty of \$25,620.

Chair Tom Porta asked for a comment from Cemex Construction Materials.

Cemex Construction Materials Environmental Director Erin Loza stated she was representing the company. She noted the company did not contest the NOAV in May. She added the company has taken appropriate abatement measures at all its plants, and that the Sparks plant passed an inspection on August 3, 2020.

Ms. Loza asked commissioners to reduce the penalty to \$12,780, with the addition of a donation or community engagement project with NDEP.

Chair Porta asked if NDEP had a comment.

Mr. Dragoni responded that Cemex Construction Materials is now in compliance. He maintained that NDEP followed the penalty matrix to determine the penalty, and felt the amount was fair.

Mr. Tucker added that the reason for issuing the compliance order was to reduce the hours of operation for the facility. This would ensure that emissions would not exceed air quality standards.

Chair Porta asked for comments from commissioners. There were none. He then asked for a motion.

Motion: Approve NDEP recommended penalty for Cemex Construction Materials Pacific, LLC in the amount of \$25,620 for NOAV No. 2788

By: Vice Chair King

Second: Commissioner Landreth

Vote: Motion passed unanimously

7) Tahoe Western Asphalt, LLC - NOAV Nos. 2783, 2784, & 2786 (Action item)

Chair Tom Porta explained the commission would need to first decide on a continuance for the agenda item. He asked Valerie King to read a letter (Attachment 3) sent from the attorneys representing Tahoe Western Asphalt (TWA).

Chair Porta asked if the letter was received after the appeal date deadline. Ms. King confirmed it was.

Chair Porta asked the commissioners for questions on the request for continuance. Jeremy Clarke, from Simon Hall Johnston, asked to speak if there were no questions from commissioners.

Mr. Clarke thanked the commission for the opportunity to speak. He stated he represented TWA. He acknowledged the purpose and scope of the hearing was to determine the fairness, adequacy, and legality of the imposition of penalties proposed by the NDEP. Mr. Clarke asked to present arguments to the commission and have his client, Robert Matthews, say a few words. He also asked the commission to consider that any action taken in furtherance of issuing a penalty would be premature and would constitute a basic violation of his client's constitutional rights to due process under the law.

Mr. Clarke stated the commission was considering what amounted to business-ending sanctions. He added that he mentioned fundamental due process because he did not have the opportunity to review, as a practical matter, documents and evidence which directly impact the adequacy and fairness of NDEP's proposed penalty.

Mr. Clarke readdressed the letter read by Ms. King requesting that the penalty inquiry be postponed. He stated on April 1, 2020, TWA was issued draft notices by NDEP of alleged violations. Mr. Clarke stated he and NDEP personnel engaged in two enforcement conferences in late April and early May. During those conferences, Mr. Clarke and NDEP representatives discussed the draft file issues and proposed order. Mr. Clarke stated he was told NDEP would defer or hold the violations and order, pending compliance with record-keeping requirements. Mr. Clarke stated NDEP had in essence said, 'all you have to do is comply with minor record keeping and these violations will go away.'

Mr. Clarke explained that the conferences induced TWA to choose compliance over appeal, since appealing

the violations would be wasteful – despite feeling the alleged violations were tenuous. Mr. Clarke stated TWA has always attempted strict compliance with the terms of its air quality permit.

Mr. Clarke then stated compliance was a moving target, and that NDEP continued to fine or generate technical deficiencies in TWA's records and reporting. He claimed NDEP was not going to allow TWA to come into compliance.

Mr. Clarke stated he then issued two targeted public records requests to NDEP on July 13th and August 12th. Citing Nevada statutes, Mr. Clarke stated NDEP had five days to respond to the requests by producing documents. Mr. Clarke claimed NDEP and the Attorney General's Office instead sent monthly letters stating that due to the nature and volume of the request, NDEP would need more time, and anticipated a full response within 30 days. Mr. Clarke added that every month, the Attorney General's Office sent a letter denying his client of critical documents needed for the hearing.

Mr. Clarke stated the responsive documents were finally received on October 1st in a "document dump." He stated NDEP produced over 5,500 documents, with many duplicates and several irrelevant documents. Mr. Clarke claimed the practice was troublesome when NDEP has free attorneys in the Attorney General's Office, while TWA must pay its attorney to review the thousands of documents.

Mr. Clarke claimed NDEP and the Attorney General's Office continued to withhold a number of responsive documents, alleging attorney-client privilege. He stated the documents were likely the most critical, as they may implicate NDEP's agenda to close TWA down.

Mr. Clarke stated NDEP withheld the documents until the day before the hearing, producing over 1,800 documents in what amounted to ambush. Mr. Clarke stated he could not sort, review, and synthesize over 1,800 documents in time for a hearing regarding the reasonableness and legality of NDEP's proposed penalties.

Mr. Clarke then requested that the commission postpone a determination on the fairness and legality of NDEP's proposed sanctions. He added that he was not suggesting to never review the penalty. He stated that if the commission moves forward and issues penalties before TWA has an opportunity to defend itself, the commission would be violating TWA's due process rights. Mr. Clarke added TWA would then be forced to protect itself using judicial remedies.

Mr. Clarke again asked that TWA be given the chance to fully and fairly address the issues presented by NDEP. He recognized the commission's neutrality and claimed moving forward with the penalties would be a miscarriage of justice. Mr. Clarke added there was no harm in giving TWA more time to fully and fairly respond.

Mr. Clarke then asked to give his client, Robert Matthews, a chance to speak.

Chair Porta asked for Mr. Matthews to hold off, calling on NDEP to respond to Mr. Clarke's statements.

Deputy Attorney General Peter Handy, representing NDEP, stated the hearing was not to determine the validity of the underlying facts of the violations; the hearing was just to determine the penalty amount to be imposed. Mr. Handy stated the alleged violations were properly noticed to TWA, and that TWA's counsel attended the enforcement meetings. He added that when the final orders were issued, no appeal was taken.

Mr. Handy stated an appeal would have been TWA's opportunity to contest the underlying facts and conclusions of NDEP regarding the circumstances of the violations. He claimed that neglecting to take those appeals waived any due process issues.

Mr. Handy stated the final violations had been properly found and issued by NDEP. He added that NDEP not fully providing the public records request to TWA was not relevant to the proceeding. Mr. Handy stated TWA effectively consented to the alleged violations by not appealing.

Mr. Handy added that TWA has other remedies available for issues with producing public records requests, and that those decisions do not come before the commission.

Chair Porta asked Mr. Handy if TWA failing to file an appeal forfeited its right to contest the penalties. Mr. Handy stated that was correct.

Mr. Clarke stated that was not correct. He claimed that, similar to a criminal hearing, there are two phases: liability and sentencing. Mr. Clarke stated TWA chose to forgo the opportunity to appeal the underlying facts; instead, TWA was asking for more time to discuss the factors that can mitigate or eliminate the potential penalty. Mr. Clarke stated TWA did not waive its right to address those factors.

Chair Porta asked for Mr. Handy's response.

Mr. Handy responded that the hearing was an administrative proceeding, not a criminal one. He stated the facts of the case were uncontested because it was not appealed. He added Mr. Clarke and TWA had the opportunity to discuss the appropriateness of the penalty, but that the underlying number of violations and the nature of the violations were not the issues facing the commission.

Mr. Handy concluded that there was no need to continue the determination of the amount of the fine. He added that the commission could consider alternative information not contained in the NOAVs.

Chair Porta asked for comments from commissioners. He reminded the commission that it was discussing a request for continuance.

Commissioner Mark Turner stated that as a member of Carson City's development community, his company had done business with TWA. He stated he would be recusing himself from the matter.

Chair Porta stated the administrative process for the agenda item was laid out in regulations. He added the appeal deadline was clearly indicated in the notices sent out, and that no appeal to the notices was received. He stated he was considering not allowing the continuance.

Vice Chair Jason King asked NDEP when the deadline was for filing an appeal. Danilo Dragoni stated the final NOAV was issued August 14, 2020 and that the deadline for an appeal was 10 days following the issuance.

Vice Chair King asked Mr. Clarke if his client received the August 14 NOAV detailing the deadline to appeal.

Mr. Clarke answered his client did receive the letter. He added that his client did not receive the date of the hearing or the proposed penalties until last week. Mr. Clarke stated the 1,800 documents sent the day before could directly impact the reasonableness of the penalties. He again asked the commission for more time to address the penalty.

Vice Chair King asked Mr. Clarke why he did not file an appeal if he was aware of the deadline.

Mr. Clarke stated NDEP had represented that if TWA came into compliance with simple record keeping requirements, the violations would go away. Mr. Clarke added that TWA had been in business for several years and had been submitting records to NDEP for several years. He stated those records had been accepted. Mr. Clarke stated TWA felt coming into compliance would be an easy task. He added that when his client would submit records, NDEP responded that it was a show of good faith.

Mr. Clarke stated the spreadsheet his client was required to fill out was the most complicated spreadsheet he had ever seen. He claimed it was highly technical with unclear requirements. He added he would like time to present the spreadsheet to the commission.

Mr. Clarke claimed NDEP almost set TWA up for failure by promising that if it came into compliance on record keeping, the violations would go away. He explained that was why he chose not to appeal.

Chair Porta asked commissioners for questions.

Commissioner Kacey KC stated when Mr. Clarke was speaking, he had claimed he did not understand the penalty matrix. She added that with past violations before the commission, his client did understand the penalty matrix. She then asked if Mr. Clarke's client had asked NDEP for help in the process.

Mr. Clarke answered it was not necessarily that he or his client did not understand how the penalty matrix works. He stated there are factors that he needed to investigate regarding the documents produced the day before, which could impact and/or mitigate the penalties being discussed. Mr. Clarke added he could not present a full picture to the commission as to whether the penalties are legal, appropriate, or do justice in the case.

Mr. Clarke again asked for a 90-day continuance. He stated at that point, he could address all the issues raised by NDEP and synthesize the documents produced. He added it came down to fundamental fairness to TWA.

Chair Porta again asked if commissioners had any questions.

Mr. Clarke stated he did not answer Commissioner KC's question. He stated he and his client asked NDEP for an explanation on the spreadsheet. He added there were so many nuances to the spreadsheet that when his client would input the information, the numbers did not make sense to NDEP, causing TWA to be considered noncompliant. Mr. Clarke stated TWA has always attempted to comply with its record-keeping requirements and will continue to do so.

Chair Porta asked if NDEP would like to respond.

Mr. Handy responded that initially, the NOAVs were drafted by NDEP and submitted to TWA and its counsel. Mr. Handy stated there were several discussions between NDEP, TWA, and TWA's counsel regarding the draft NOAVs.

Mr. Handy stated that there is a resolution of the orders being issued. He claimed at no time did NDEP indicate that there would not be any penalty associated with the issuance of the final orders. Mr. Handy added it was clear from both the issued orders and Nevada law that a penalty must come with the violations.

Chair Porta again asked if commissioners had any questions.

Vice Chair King stated the proposed penalty was one of the largest he had seen. He added that Mr. Clarke's client had history with the commission. Vice Chair King stated before he could vote on a 90-day continuance, he wanted to know if control problems with TWA had been fixed and if TWA was in compliance.

Mr. Dragoni answered that TWA was issued a stop order on August 14, 2020. He stated TWA would need to provide complete and appropriate record keeping to lift the order.

Vice Chair King asked if the water sprays listed in the violation were fixed before the August 14 stop order.

Mr. Dragoni answered that one of the violations being considered was that TWA failed to maintain emission controls – in this case, its water sprays. He added that as far as he knew, TWA had resolved the issue.

Mr. Clarke added that there were a number of issues as part of the stop order. One issue was a propane monitoring device, which Mr. Clarke's client had secured but was waiting for NDEP approval on.

Mr. Clarke stated TWA needed to get past the record-keeping issue with NDEP. He added that there was no risk to the environment in allowing for additional time to discuss the penalties since TWA was not currently operating.

Vice Chair King then asked if TWA missing the appeal period shut the door on SEC considering a continuance. He stated if that were the case, the commission would continue with the agenda.

Mr. Clarke answered that the door was shut to address the merits of the violations, but not to discuss whether the penalties were appropriate, adequate, or legal. He stated discussions about the penalties should be considered by the commission. He conceded that without an appeal, he could not discuss the underlying facts at the hearing. Mr. Clarke stated the appropriateness, adequacy, and legality of the penalties was open for discussion.

Chair Porta asked if SEC Legal Counsel Henna Rasul could answer Vice Chair King's question.

Ms. Rasul stated she would defer to Mr. Handy's position.

Mr. Handy stated it would not be unlawful to continue the hearing. He maintained that NDEP felt the hearing should not be continued. Mr. Handy stated Mr. Clarke's client was attending the meeting via phone and could answer commissioners' questions about the violations.

Mr. Handy added the math for the penalty matrix was straightforward. He stated NDEP personnel could answer any questions from Mr. Clarke or the commission regarding the penalties.

Chair Porta reiterated that commissioners were discussing whether to continue the hearing. He added that the appellant had ten days to respond to the notice with an appeal. He stated he was leaning toward not allowing the continuance.

Commissioner Mike Visher stated he agreed with Chair Porta. He added that TWA and its counsel had multiple opportunities to discuss the violations or file an appeal.

Commissioner Visher stated the role of the commission was to make sure the use of the penalty matrix was appropriate. He added that he did not see how the commission could extend the hearing.

Commissioner KC stated being out of compliance was not being argued. The penalty matrix defines an entity as being noncompliant and goes through a process. She added that she did not know if a public records request would change the outcome of the commission's decision. She stated the fine comes from being noncompliant.

Chair Porta added that the SEC is not the last stop for TWA to argue the penalty. TWA still has a judicial review to consider if they do not agree with the commission's decision.

Chair Porta then asked for a motion.

Motion: Deny the request of TWA for a continuance

By: Commissioner Sullivan

Second: Commissioner Landreth

Vote: Motion passed unanimously with Commissioner Turner abstaining

Danilo Dragoni presented the penalty assessed to TWA. He stated he wanted to go through the timeline of events once more to reinforce some of the key points of the case.

Mr. Dragoni explained that TWA operates an asphalt plant under a Class II Air Quality Operating Permit. The facility is near Mound House, off Highway 50.

Mr. Dragoni stated that NDEP responded to a report on March 23, 2020 claiming there was smoke coming from the plant. A compliance inspector was sent to investigate. The officer observed part of the TWA process exceeding the opacity limits specified in the air quality permit. Mr. Dragoni explained that pass-through facilities like TWA are on a five-year schedule for full inspections. As TWA started operating in 2016, NDEP had not conducted a full inspection yet.

Mr. Dragoni added that when there is suspicion or evidence that a facility is not in compliance, NDEP conducts a full inspection. So, over two days, the compliance officer performed a full inspection of TWA. Based on that inspection, four draft notices of violation were issued on April 1. Mr. Dragoni stated these alleged violations were serious and substantial. They included non-operational controls, unpermitted equipment, opacity violations, and extensive failure to meet monitoring and record keeping requirements.

Mr. Dragoni stated that between April and May, NDEP engaged in three enforcement conferences with TWA to further discuss, investigate, and assess the noncompliance issues and how to resolve them. NDEP worked with TWA to develop the draft order, which was shared with TWA in its draft stage. The order was issued May 14.

Mr. Dragoni explained the order, which was appealable, required TWA to install monitoring equipment and begin acquiring and submitting record keeping. He added that the order also required TWA to submit a permit revision application for the unpermitted equipment found during the full inspection. The order also defined a clear schedule on the record keeping process. Mr. Dragoni stated that all the requests defined in the order came directly from the permit issued to TWA.

Mr. Dragoni stated that in May, June, and July, TWA failed to meet complete monitoring and record keeping requirements. On August 14, NDEP issued a conditional stop order and three final notices of violation, including: failing to comply with opacity limits, failing to maintain monitoring and record keeping requirements, and failing to maintain required air pollutant controls. Mr. Dragoni explained the final notices are required to issue a stop order.

Mr. Dragoni stated the stop order went into effect August 26 because NDEP did not receive complete records from TWA. He added this was another opportunity for TWA to appeal the stop order and/or the final NOAVs. Mr. Dragoni added that NDEP continues to have contact with TWA and its counsel. He stated NDEP's goal is to help bring the facility back in compliance.

Mr. Dragoni stated on October 26, NDEP notified TWA of the penalty being recommended to the SEC. He added that it is NDEP's practice to discuss penalties either at an enforcement conference, or before the final NOAV is issued.

Mr. Dragoni stated the case was the most complex NDEP had ever addressed before the SEC. He claimed

that because of the severity of the noncompliance, NDEP fought for almost five months to bring TWA back into compliance.

Mr. Dragoni stated NDEP tried to apply the penalty matrix fairly. He added the penalty for TWA could have been much higher than what was proposed – in the order of millions of dollars. Mr. Dragoni claimed that NDEP was recommending a penalty that was only 4 percent of what the penalty matrix would have recommended.

Chair Tom Porta asked what TWA was specifically required to have for record keeping purposes.

Mr. Dragoni answered that in general, record keeping parameters define how a facility operates. The information is directly related to what pollutants and how much of those pollutants are emitted by the facility. Mr. Dragoni explained that during the permit application process, NDEP uses those parameters to calculate the impact the facility will have on air quality.

Mr. Dragoni stated NDEP puts the monitoring and record keeping requirement in the permit so both NDEP and the facility can record operations and determine if the facility is in compliance with air quality standards.

Chair Porta asked if these parameters were in the original permit for TWA. Mr. Dragoni confirmed both NDEP and TWA approved the original permit. He added the permit was revised in 2018.

Chair Porta asked if there were any more questions for Mr. Dragoni. There were none.

Mr. Dragoni then outlined each individual violation:

1. **Violation 2786:** for emissions exceeding opacity limits

Mr. Dragoni explained that opacity is a visual way to determine how dark a stack plume is. Opacity is related to the amount of pollution emitted. A clear or white plume implies there is no pollution coming out of the stack; a very dark plume implies a significant amount of pollution. Mr. Dragoni stated EPA developed a widely accepted method to determine opacity. He added NDEP compliance inspectors are certified to properly assess opacity.

An inspector determined TWA exceeded its 20 percent opacity limit.

Penalty: \$10,000

Andrew Tucker explained the penalty calculations for the violation. He stated the base penalty for an emission unit violating opacity limits is \$1,000. The penalty is modified based on the deviation from permit limits. Mr. Tucker stated a single penalty was recommended, as the violations observed occurred on a single day. He added several observations were recorded to make sure the opacity assessment was fair.

Mr. Tucker stated the opacity deviation resulted in a multiplier of six times the base penalty, for a total of \$6,000. That total is modified based on a facility's history of compliance. A modifier of 45 percent was added for previous violations assessed in the past five years. Mr. Tucker explained there was also a 200 percent modifier for having a similar violation in the last three years, bringing the total penalty adjustment to 245 percent. The total base penalty was calculated at \$14,700.

Mr. Tucker explained the final penalty was calculated at \$20,700, as a result of adding the \$6,000 base penalty to the \$14,700 penalty adjustment.

Mr. Tucker stated the penalty exceeded the \$10,000 cap for a "per day" violation penalty. Therefore, NDEP

was recommending a penalty of \$10,000.

Mr. Tucker added that there were no additional complaints regarding smoke coming from the facility. He noted TWA had been under a stop order for a period of time.

Chair Porta clarified that NDEP was recommending a \$10,000 penalty, not the \$20,700 calculated by the penalty matrix. Mr. Tucker stated that was correct.

2. **Violation 2783:** for failure to maintain required emission controls

Mr. Dragoni stated the full inspection of TWA found the facility failed to maintain its water sprays. He added the controls reduce emissions from specific emission units. Mr. Dragoni stated if controls are not operating properly, a facility will likely exceed the emission limits defined in its permit.

Penalty: \$870

Mr. Tucker explained the base penalty for failing to maintain controls is \$600. No modifiers were applied to the gravity fine. A penalty adjustment multiplier of 45 percent was added for nine previous violations, resulting in a \$270 penalty adjustment. The final penalty is the \$600 gravity fine plus the \$270 penalty adjustment, for a total of \$870.

Mr. Tucker added TWA had provided photographic evidence that its water sprays were now in operational condition. He noted NDEP staff had not verified the evidence on site due to COVID-19 restrictions.

3. **Violation 2784:** for failing to comply with monitoring and record keeping requirements

Mr. Dragoni stated the full inspection of TWA found the facility failed to comply with monitoring and record keeping requirements. He added the issue was not just a lack of historical records; it meant NDEP could not verify if the facility was previously in compliance. It also meant the facility could not assess if it was currently in compliance.

Mr. Dragoni noted monitoring requirements for opacity were not completed by TWA. The permit for TWA required the facility to conduct an opacity test weekly and make an opacity observation daily. Mr. Dragoni explained the daily observation could provide a qualitative assessment on opacity for a stack.

Mr. Dragoni claimed that if monitoring requirements were in place, TWA's facility operator could have discovered the facility was operating above its opacity limit and taken corrective actions before a complaint was made. Mr. Dragoni reiterated record keeping directly relates to how a facility operates and how much pollution it emits.

Penalty: \$117,450

Mr. Tucker stated there were challenges for NDEP when it came to recommending the penalty. He noted the recommended penalty was less than the maximum penalty that could be calculated with the penalty matrix.

Mr. Tucker stated the penalty matrix recommends the penalty be calculated per each emission unit and for each instance where requirements were not met. Many record keeping processes are required daily. Mr. Tucker explained the result would be a \$600 penalty, plus modifiers, for each day the violation occurred.

Mr. Tucker stated assessing the penalty for each of TWA's emission units was not appropriate, as TWA's permit requires the facility to keep records for each system, not for each emission unit. Mr. Tucker added if a per day violation was assessed for all three systems for the entire period of noncompliance – from when

TWA began operations July 9, 2016 to the inspection on March 23, 2020 – the penalty would be more than \$3.5 million. He stated a penalty of that magnitude would be unreasonable.

Mr. Tucker stated NDEP considered other ways to use the penalty matrix to assess ongoing violations. He explained the calculation period could be assessed daily, weekly, or monthly. NDEP chose to assess the penalty by months, meaning the base penalty would be \$600 per month.

Mr. Tucker stated Nevada Administrative Code considers monitoring and record keeping violations to be minor; however, on the fourth occurrence, the violations become major violations. Since TWA had three previous monitoring and record keeping violations, this penalty was now being presented before the commission.

Mr. Tucker explained the base penalty per system was \$600. NDEP was recommending penalties for three systems for a 45-month period. The base penalty, multiplied for the three systems, multiplied by the 45 months, resulted in a gravity fine of \$81,000. A penalty adjustment multiplier of 45 percent was added for previous violations over the past five years, resulting in penalty adjustment of \$36,450. The gravity fine of \$81,000 plus the penalty adjustment of \$36,450 equaled \$117,450.

Chair Porta asked if there were any questions from commissioners.

Commissioner Mike Visher asked if the 45 months was calculated by the number of months each system was in noncompliance. He also asked to what degree were TWA's records considered incomplete.

Mr. Tucker answered the 45 months is the number of whole months from when TWA began operations until the inspection – 1,353 days. He explained the number is rounded down to complete months.

Mr. Tucker added the deviation of record keeping from permit requirements is not calculated into the penalty. He explained having penalties for multiple parameters would result in a larger penalty, so each system is deemed to be in compliance or not in compliance.

Commissioner Visher noted TWA had provided various opacity observations to NDEP. He added the observations seemed inconsistent. Commissioner Visher asked if TWA had explained to NDEP why the records were inconsistent.

Mr. Tucker answered that there were some records provided. He noted one system required opacity observations weekly, and that TWA provided a handful of records for those. Mr. Tucker added other emission units required monthly observations, but those records were largely not kept by the facility. He concluded that there was not a satisfactory answer given for why TWA did not conduct those observations.

Mr. Dragoni added that for NDEP to determine compliance, a facility needs to have complete records daily. Incomplete or partial records does not allow NDEP to determine compliance.

Chair Porta asked if there were any more questions from commissioners. There were none. He then asked for a response from TWA or its counsel.

Jeremy Clarke responded that the penalty matrix and the numbers used were arbitrary. He noted that the 45 months was calculated from when operations began at TWA to the date of the inspection. He claimed that calculation was not included in the alleged violation notice and was being brought up for the first time.

Mr. Clarke then noted the fine was assessing three systems. He stated NDEP wanted to review records from the whole facility. He explained if TWA was out of compliance, the penalty should be assessed for one system.

Mr. Clarke recalled Mr. Tucker's statement that if NDEP could have given TWA a \$3.5 million penalty for record keeping violations if the calculations were assessed daily. Mr. Clarke claimed that NDEP having the discretion to use monthly units showed there was no uniform way to assess the penalty. He added \$117,450 fine goes beyond punitive.

Mr. Clarke remarked on Mr. Dragoni's statement that NDEP's goal was to bring TWA into compliance. Mr. Clarke stated TWA was under a stop order and would not be able to get the stop order lifted until it comes into compliance.

Mr. Clarke then asked the commission to consider his calculation: using the \$600 base penalty, multiplied by one system for the 45-month period, would equal \$27,000. Mr. Clarke noted there was no adjusting the 45-percent modifier for recent violations. Adding the penalty adjustment would equal a total fine of \$39,150.

Mr. Clarke stated his calculation seem more appropriate than combining the additional systems. He also stated there was no basis to use the 45-month period. He asked NDEP to provide its rationale for its calculation.

Chair Porta asked Mr. Dragoni or Mr. Tucker to answer Mr. Clarke.

Mr. Dragoni answered that a permit requires a facility to retain the records it collects for five years. He added it is not unusual for NDEP to require five years of records during a full inspection. Mr. Dragoni explained that was why the penalty was assessed from when TWA began operations in 2016.

Mr. Dragoni stated NDEP assessed every day each system and emission unit was not in compliance, as well as each time complete records were not kept. He explained the 45 months was an interpretation of the penalty matrix. Mr. Dragoni reiterated that multipliers could have been added for each emission unit and for each day records were not kept, resulting in a penalty over \$3 million.

Mr. Dragoni agreed that the 45 months was somewhat arbitrary. He stated the penalty matrix allows NDEP to assess by day, week, or month. Mr. Dragoni claimed the recommended penalty was fair for the purpose of the violation.

Mr. Dragoni added that TWA's permit only requires NDEP to test TWA's burner every five years. He stated record keeping is the only way to assess if the facility is in compliance between tests.

Chair Porta asked Mr. Dragoni if TWA had since provided records that helped NDEP determine whether the facility was in compliance during the 45-month period.

Mr. Dragoni stated TWA had tried to comply since the inspection; however, since the first order was issued requiring TWA to submit records, all records provided to NDEP were incomplete and insufficient to determine if the facility was in compliance.

Chair Porta clarified that based on the records provided by TWA, NDEP could not assess if the facility was compliant. Mr. Dragoni stated that was correct.

Chair Porta then asked if TWA had completed a source test at any time.

Mr. Dragoni reiterated the burner must be tested every five years. Chair Porta asked if TWA passed the initial test.

Mr. Tucker answered that he believed TWA passed a source test in the past. He added TWA had a prior violation for not meeting an emission standard during testing. He stated TWA had since passed a test to

show compliance.

Mr. Tucker also noted that NDEP's inability to determine compliance from the records TWA provided was the reason the stop order was issued. He added there were significant deficiencies that prevented NDEP from determining compliance. One deficiency was not having an accurate method of monitoring the propane consumption of the burner heating the asphalt; another was the lack of equipment monitoring the temperature of the exhaust produced. Mr. Tucker explained if the temperatures were too high, additional emissions could be produced.

Vice Chair King stated that when TWA had violated its permit in the past, NDEP did not request similar records. He asked Mr. Dragoni to clarify why records were being requested for these violations.

Mr. Dragoni answered that full inspections are only conducted every five years. Noncompliance inspections focus on a specific issue. He added that when there is suspicion of broader noncompliance issues, NDEP may determine a full inspection is needed.

Mr. Dragoni stated the March inspection, like previous inspections, focused on a specific issue. He explained TWA's history of noncompliance warranted a full inspection.

Vice Chair King stated in a previous SEC hearing with TWA, a number of people downwind of the facility asserted the plumes being emitted were toxic. He asked why NDEP did not conduct more tests, considering the heightened discussion on the issue.

Mr. Dragoni answered that tests were conducted and analyzed. He also noted that TWA had a successful burner test in 2017.

Mr. Dragoni stated many problems related to TWA are associated with zoning. He added the odors the neighbors were complaining about were not indicative of noncompliance with air quality standards.

Mr. Dragoni stated NDEP focused on TWA's issues with opacity. He added that NDEP looked closely at stop test results. He concluded that during these observations, there were no compliance issues related to air quality standards.

Chair Porta asked if Mr. Clarke had any more questions.

Mr. Clarke stated that the 45-month penalty period was based on the assumption that TWA operated every month from when it began operations to the date of the inspection. He stated that was an incorrect assumption.

Mr. Clarke stated that due to the lack of construction projects in the winter, TWA routinely shuts down its facility for weeks at a time. He reiterated there was no basis for the 45 months.

Mr. Clarke noted the penalties imposed due to incorrect propane recording. He stated his client reported his propane output. Mr. Clarke claimed NDEP did not accept the figures and wanted his client to purchase a propane monitoring device.

Mr. Clarke also stated the temperature of the exhaust coming from the facility stack was monitored from the main building of the plant. He claimed the exhaust temperatures never exceeded the permit because the plant could not get that hot.

Mr. Clarke also stated he disagreed with Mr. Dragoni that the reported odors from the facility were not the focus of NDEP. Mr. Clarke claimed Mr. Dragoni asked his client via email to address neighbors concerns about the odor, despite odor not being indicative of noncompliance.

Mr. Clarke concluded that the \$117,450 penalty was arbitrary, excessive, and goes beyond the need to deter and punish noncompliance by TWA.

Chair Porta asked if there were any comments from the public. Valerie King stated there was no one who telephoned into the meeting waiting to comment.

Chair Porta noted Commissioner Tony Wasley had left the meeting. He stated there was still a quorum for the meeting.

Mr. Clarke stated there was no evidence that the calculations NDEP presented were based in fact. He claimed there was no evidence TWA was in operation for the full 45-month penalty period; therefore, the penalty for violating record keeping requirements should not be applied over 45 months.

Chair Porta asked for questions from commissioners.

Commissioner Kacey KC asked Mr. Clarke if his request for a continuance was only regarding the 45-month penalty period for Violation 2784, and not related to the other penalties.

Mr. Clarke answered that his argument was limited to Violation 2784, and that he did not raise arguments to the other alleged violations.

Mr. Dragoni added that the 45-month penalty period was not arbitrary. He stated the 45 months was a way to balance the strict interpretation of the penalty matrix. Mr. Dragoni stated NDEP's goal was deterrence, so the recommended penalty was more appropriate.

Chair Porta asked for any recommendations from the commission.

Commissioner Kathryn Landreth clarified that the 45 months was a balance, as the penalty assessed would be less than if calculated on a daily basis. She then asked if NDEP had evidence to support a daily penalty.

Mr. Dragoni reiterated the monthly calculation resulted in a penalty less than 4 percent of what was calculated for a daily penalty. He also confirmed that NDEP did have evidence to support calculating the penalty per day.

Mr. Tucker stated NDEP had discussed the penalties with Mr. Clarke during the enforcement process. He claimed during that time, TWA was unable to provide complete records for any of its systems at any time between beginning operations and the March inspection. Mr. Tucker added partial records were provided, but never complete records.

Vice Chair King asked if TWA had ever told NDEP that its facility was not operating for any period of time.

Mr. Tucker answered that point was never raised. He noted it is a difficult situation to assess after the fact if a facility was operating or not. He stated without any records to back up TWA's claims, there is no way to verify them.

Chair Porta asked for more questions from commissioners.

Commissioner Visher stated record keeping was part of the terms of TWA's permit. He added that in the first instance of a major violation, a review of the facility's records should be conducted early on.

Commissioner Visher stated TWA was clearly not keeping complete records per the terms of its permit. He added NDEP seemed to give TWA the benefit of the doubt by looking at an overall approach.

Chair Porta stated NDEP did not know if TWA was out of compliance during the 45-month penalty period. He added that was why a facility must keep records, in lieu of having a continuous monitoring system.

Chair Porta stated there was not enough data to show a direct impact on the environment. He added that the penalty seemed excessive, but that NDEP needed the record keeping information.

Chair Porta added that he had also considered lowering the number of systems calculated in the penalty from three to one. He then asked for more comments from commissioners.

Commissioner Landreth stated she felt uneasy about assessing a 45-month penalty period. She added the violation should have been caught sooner. She asked if the commission had an adjustment to the proposed penalty.

Chair Porta stated the violation should have been caught sooner considering the previous penalties. He added that without records, there was no way to show TWA had been in compliance.

Chair Porta stated he used Mr. Clarke's calculation to reach a total fine amount of \$39,150. He asked commissioners if the amount was appropriate.

Commissioner Adam Sullivan asked if the amount was the same one Mr. Clarke suggested. Chair Porta clarified that the \$600 base penalty for one system, multiplied by the 45 months, equaled \$27,000. The 45 percent penalty adjustment equaled \$12,150. Adding \$27,000 to \$12,150 equaled \$39,150.

Commissioner Visher state one way to rationalize the calculation is that only one system was failing the opacity test. He explained that could justify calculating the penalty based on one system instead of three.

Chair Porta asked for any more comments from commissioners. There were none.

Motion: Adjust the penalty for NOAV 2784 to \$39,150

By: Commissioner Landreth

Second: Vice Chair King

Vote: Motion passed unanimously

Motion: Approval of proposed penalties as set by NDEP for NOAV 2783 (\$870) and 2786 (\$10,000)

By: Commissioner Landreth

Second: Commissioner Visher

Vote: Motion passed unanimously

8) Administrator's briefing to the commission (Discussion)

NDEP Administrator Greg Lovato welcomed Chair Tom Porta and Vice Chair Jason King into their new roles. He also welcomed new commissioners Adam Sullivan and Jocelyn Torres. Mr. Lovato then thanked the commission for the work that it does.

Mr. Lovato stated that NDEP promoted Aimee Keys to chief of the Bureau of Mining, Regulation, and Reclamation. He added that Ms. Keys was previously the Closure Branch supervisor and had replaced Joe Sawyer, who retired in October.

Mr. Lovato stated Ms. Keys helped her bureau adapt to teleworking and was the driving force for making the regulation revisions approved by the commission in July 2020.

Mr. Lovato then addressed NDEP's budget, stating the division was doing well. He added the entities that NDEP collects fees from were less impacted by the economic downturn in the State.

Mr. Lovato stated NDEP employees would begin furloughing one day a month starting in January 2021 and continuing through June 2021.

Mr. Lovato added that NDEP participated in an interagency workgroup led by the Department of Conservation and Natural Resources and the Governor's Office of Energy. The group submitted a State climate strategy to the governor December 1, 2020. The strategy outlines 17 greenhouse gas reduction policies.

Mr. Lovato continued, stating NDEP had begun outreach on low and zero emission vehicle standards for light-duty cars and trucks in the State.

Chair Porta asked if federal grants and fees were impacted by the economy.

Mr. Lovato answered that grants have remained flat for several years. He added there has been increased revenue from a Department of Energy grant related to the Nevada National Security Site. Mr. Lovato stated fee increases have also helped fund NDEP.

NDEP Deputy Administrator Jennifer Carr added water programs were looking at fee increases in the coming year.

Chair Porta then asked if NDEP had anything upcoming in the session.

Mr. Lovato answered that NDEP has one bill draft request for the upcoming legislative session. He stated it was related to the Petroleum Fund. Mr. Lovato added that NDEP would need to look at how to fund future climate policies without increasing spending.

Chair Porta asked for comments from commissioners. There were none.

9) Public comment

Chair Porta asked for comments from the public. There were none.

Valerie King introduced the new SEC Recording Secretary, Danyel Soulier.

10) Adjournment

Chair Porta thanked everyone for their participation and adjourned the meeting.

ATTACHMENTS

ATTACHMENT 1: Flow Chart and Excerpt for R126-19

ATTACHMENT 2: Cemex Construction Materials Pacific, LLC;
NOAV 2788, Penalty Presentation, Penalty Matrix, SEC Settlement Table

ATTACHMENT 3: Tahoe Western Asphalt LLC;
Penalty Presentation, NOAV 2783, NOAV 2784, NOAV 2786, Request for Continuation

ATTACHMENT 1:

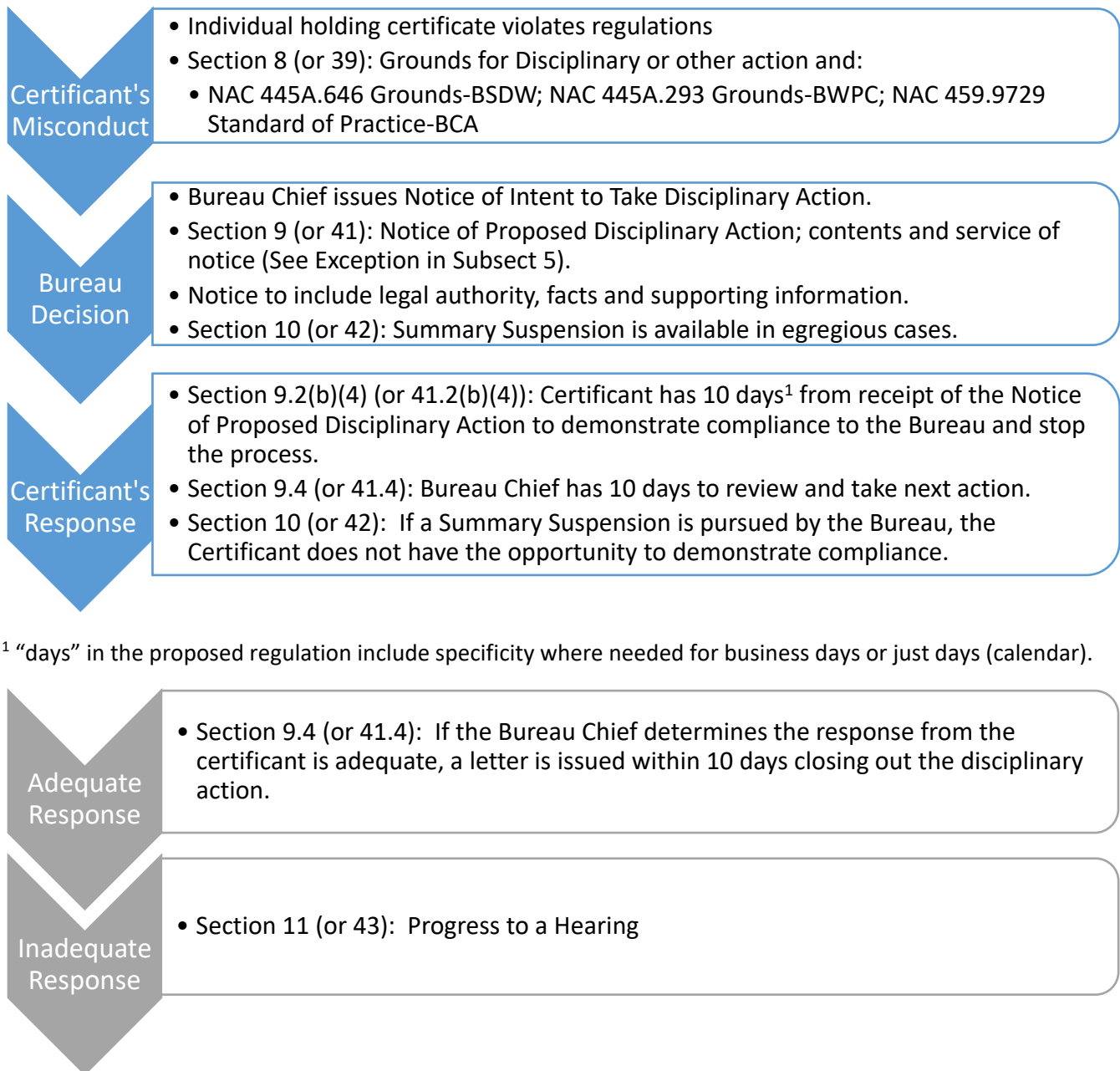
Flow Chart and Excerpt for R-126-19

R126-19: Certification Programs, Enforcement & Appeal Process

Flow of Events & Decisions

Initial Section numbers refer to the portion of the petition pertaining to NAC 445A for Drinking Water and Wastewater Operators; those in (parens) pertain to NAC 459 for Certified Environmental Managers, Underground Tank Handlers and Underground Tank Testers.

Finding of Grounds and Issuance of Notice of Intent



Progression to a Hearing

Hearing Notice

- Section 11 (or 43): If the Division (i.e. Bureau Chief) determines that the Certificant's response does not adequately demonstrate full compliance (or the Certificant is not entitled to a response period), then a Notice of Hearing is issued by the Division.
- Notice includes the hearing date, time, location and other required information.

Hearing

- Section 11 (or 43): The Hearing shall be held between 30-60 days of the date of the hearing notice.
- Section 10 (or 42): A hearing for summary suspension must be held within 45 days of the date of suspension.
- See "*Hearing Flow and Timelines*" sheet for Hearing process.

NDEP Decision

- Section 20 (or 52): The Administrator receives the Hearing Officer recommendation within 30 days and issues a decision within 45 days of the hearing date.
- Decision includes findings of fact and conclusions of law.
- Section 26, 28 or 40: The Administrator may: revoke, suspend, place on probation, or take other such action as appropriate
- Section 20.3 (or 52.3): Decision is final 30 days after the date of service unless appealed within 10 days.

After...

- Section 23 (or 55): If the decision of the Administrator results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.

Also...

- Section 26.5, 27.5 or 40.2: Disciplinary action taken by the Administrator through this process is separate from, and potentially in addition to, civil or criminal formal enforcement proceedings provide by other statutes or regulations.

Hearing Flow and Timelines

Hearing Officer

- Section 12 (or 44): The Administrator of NDEP appoints a hearing officer for the proceeding.
- The hearing officer is preferably outside NDEP but within DCNR.

NDEP Exhibits & Witnesses

- Section 11 (or 43): NDEP states authority and facts, sends exhibits and a list of witnesses with the Hearing Notice .
- Copies of documents listed as exhibits are attached to the Notice.

Certificant Exhibits & Witnesses

- Section 13 (or 45): The certificant shall provide NDEP with witnesses and exhibits at least 5 days before the hearing.
- The hearing officer can exclude any untimely information

Motions

- Section 14 (or 46): All pre-hearing motions shall be filed with the hearing officer at least 10 business days prior to the hearing
- Responses to pre-hearing motions shall be filed with the hearing officer within 7 business days after receipt of the motion. (i.e. by 3 days before the hearing)
- In certain circumstances, the respondent may move for confidential handling of the hearing.

Briefs

- Section 15 (or 47): The hearing officer has the authority to order the parties to file briefs.
- Sections 16-18 (or 48-50): Provision for miscellaneous procedural items.

Order of Proceeding

- Section 19 (or 51): The noticed hearing shall proceed as detailed in this section
 - i.e. order of testimony, cross-examination, rebuttal, etc.
- Section 20 (or 52): Hearing Officer prepares a written recommendation for the NDEP Administrator within 30 days.

NDEP Decision

- Return to "Progression to a Hearing" flow sheet at "NDEP Decision".

Appeal to SEC

SEC Appeal

- Section 21 (or 53) : The Notice of Appeal and request for hearing must be filed within 10 days and include particularity on each point of law or fact in question.
- The appellant shall identify the parts of the record before the hearing officer that are relevant and state arguments in support of appeal intending to be presented to the Commission.
- The opposing party may file a response within 15 days

SEC Hearing

- Section 22 (or 54): Oral argument before the SEC will be scheduled within 60 days of receipt of the request for appeal (unless parties agree to waive for good cause).
- Oral arguments are limited to 15 minutes.
- The SEC can affirm, reverse or modify the decision of the Administrator, or remand to the Administrator.
- The decision of the SEC can be subject to Judicial Review

After...

- Section 23 (or 55): If the decision of the SEC results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.

R126-19 Excerpt - Grounds for Disciplinary Action - Handout Wastewater Treatment Operators

Sec. 8. *In addition to any other grounds for disciplinary action provided by statute or regulation, the Division may take disciplinary action against a holder of a certificate if the holder has:*

- 1. Engaged in fraud or deceit in obtaining or attempting to obtain or renew a certificate;*
- 2. Cheated on any examination required to obtain or renew a certificate;*
- 3. Committed an act of gross negligence, incompetence or misconduct in the performance of his or her duties as a holder of a certificate;*
- 4. Violated any requirement for a holder of a certificate set forth in NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 5. Aided or abetted any person in the violation of any requirement for a holder of a certificate set forth in NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 6. Been convicted of or entered a plea of guilty or nolo contendere to any crime of which an essential element is dishonesty or which is directly related to any activity for which a certificate is required pursuant to NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 7. Provided services for which a certificate is required pursuant to NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable, after the certificate has expired or been suspended or revoked;*
- 8. Been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency if at least one of the grounds for discipline is the same as or substantially similar to any grounds set forth in this section or NAC 445A.293 or 445A.646, as applicable;*
- 9. Demonstrated disregard for the health and safety of the public and the environment;*
- 10. Acted outside the rights and privileges of the certificate that the person holds;*
- 11. Willfully made any false statement or failed to correct a false statement previously made to a governmental agency with regulatory authority that is material to the administration or enforcement of any statutory or regulatory provision to which the certificate applies; or*
- 12. Failed to comply with an order issued by the Administrator.*

Sec. 26. NAC 445A.293 is hereby amended to read as follows: ...

3. *The Division may take action pursuant to subsection 1 or 2 [i.e. deny an application, place an Operator on probation, suspend or revoke a certificate, or take other disciplinary action] if the applicant or holder of the certificate:*

~~[1.]~~ **(a)** In applying for or obtaining a certificate, has submitted to the Division any application, document, record, report or affidavit, or any information in support thereof, which is false or fraudulent;

~~[2.]~~ **(b)** Is grossly negligent, incompetent or has committed misconduct in the performance of his or her duties as an operator of a plant for sewage treatment;

~~[3.]~~ **(c)** Has demonstrated disregard for the health and safety of the public and the environment;

~~[4.]~~ **(d)** Has acted outside the rights and privileges of the grade for which he or she holds a certificate;

~~[5.]~~ **(e)** Has been convicted of a violation of any federal law or law of any state relating to water quality, including, without limitation, the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;

~~[6.]~~ **(f)** Has been convicted of ~~[a]~~, *or entered a plea of guilty or nolo contendere to, any* felony or other crime involving moral turpitude, dishonesty or corruption;

~~[7.]~~ **(g)** Has willfully made to a governmental agency with regulatory authority any false statement, *or failed to correct a false statement previously made*, which is material to the administration or enforcement of any provision of this chapter or chapter 445A of NRS;

~~[8.—Has failed to renew his or her certification;]~~

(h) Continues to work as an operator of a plant for sewage treatment after his or her certificate has expired or been suspended or revoked; or

~~[9.]~~ **(i)** Has violated, attempted to violate, assisted or abetted in the violation of or conspired to violate any provision of this chapter or chapter 445A of NRS.

... 5. *Any disciplinary action taken pursuant to this section and sections 3 to 23, inclusive, of this regulation is separate from and may be in addition to any other civil or criminal action provided by statute or regulation.*

R126-19 Excerpt - Grounds for Disciplinary Action - Handout Drinking Water Distribution or Treatment Operators

Sec. 8. In addition to any other grounds for disciplinary action provided by statute or regulation, the Division may take disciplinary action against a holder of a certificate if the holder has:

- 1. Engaged in fraud or deceit in obtaining or attempting to obtain or renew a certificate;*
- 2. Cheated on any examination required to obtain or renew a certificate;*
- 3. Committed an act of gross negligence, incompetence or misconduct in the performance of his or her duties as a holder of a certificate;*
- 4. Violated any requirement for a holder of a certificate set forth in NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 5. Aided or abetted any person in the violation of any requirement for a holder of a certificate set forth in NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 6. Been convicted of or entered a plea of guilty or nolo contendere to any crime of which an essential element is dishonesty or which is directly related to any activity for which a certificate is required pursuant to NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable;*
- 7. Provided services for which a certificate is required pursuant to NAC 445A.2862 to 445A.293, inclusive, or NAC 445A.617 to 445A.652, inclusive, as applicable, after the certificate has expired or been suspended or revoked;*
- 8. Been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency if at least one of the grounds for discipline is the same as or substantially similar to any grounds set forth in this section or NAC 445A.293 or 445A.646, as applicable;*
- 9. Demonstrated disregard for the health and safety of the public and the environment;*
- 10. Acted outside the rights and privileges of the certificate that the person holds;*
- 11. Willfully made any false statement or failed to correct a false statement previously made to a governmental agency with regulatory authority that is material to the administration or enforcement of any statutory or regulatory provision to which the certificate applies; or*
- 12. Failed to comply with an order issued by the Administrator.*

Sec. 27. NAC 445A.646 is hereby amended to read as follows: ...

3. *The Division may take action pursuant to subsection 1 or 2 [i.e. deny an application, place an Operator on probation, suspend or revoke a certificate, or take other disciplinary action] if the applicant or holder of the certificate:*

(a) In applying for or obtaining a certificate, has submitted to the Division any application, document, record, report or affidavit, or any information in support thereof, which is false or fraudulent;

~~**(2.)**~~ **(b)** Is grossly negligent, incompetent or has committed misconduct in the performance of his or her duties as an operator of a public water system;

~~**(3.)**~~ **(c)** Has demonstrated disregard for the health and safety of the public;

~~**(4.)**~~ **(d)** Has acted outside the rights and privileges of his or her classification for which he or she holds a certificate;

~~**(5.)**~~ **(e)** Has been convicted of a violation of any federal law or law of any state relating to water quality, including, but not limited to, the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.;

~~**(6.)**~~ **(f)** Has been convicted of ~~**(a)**~~, **or entered a plea of guilty or nolo contendere to, any** felony or other crime involving moral turpitude, dishonesty or corruption;

~~**(7.)**~~ **(g)** Has willfully made to an employee of the Division or any health authority any false statement, **or failed to correct a false statement previously made**, which is material to the administration or enforcement of any provision of this chapter or chapter 445A of NRS;

~~**(8.—Has failed to renew his or her certification;)**~~

(h) *Continues to act as an operator after his or her certificate has expired or been suspended or revoked;* or

~~**(9.)**~~ **(i)** Has violated, attempted to violate, assisted or abetted in the violation of, or conspired to violate any provision of this chapter or chapter 445A of NRS.

... 5. *Any disciplinary action taken pursuant to this section and sections 3 to 23, inclusive, of this regulation is separate from and may be in addition to any other civil or criminal action provided by statute or regulation.*

R126-19 Excerpt - Grounds for Disciplinary Action - Handout CEMs ~ UTHs ~ UTTs

Sec. 39. *In addition to any other grounds for disciplinary action provided by statute or regulation, the Division may take disciplinary action against a holder of a certificate if the holder has:*

- 1. Engaged in fraud or deceit in obtaining or attempting to obtain or renew a certificate;*
- 2. Cheated on any examination required to obtain or renew a certificate;*
- 3. Committed an act of gross negligence, incompetence or misconduct in the performance of his or her duties as a holder of a certificate;*
- 4. Violated any requirement for a holder of a certificate or aided or abetted any person in the violation of any requirement for the holder of a certificate set forth in NAC 459.970 to 459.9729, inclusive;*
- 5. Violated any requirement or aided or abetted any person in the violation of any requirement of NAC 445A.226 to 445A.22755, inclusive, 445C.010 to 445C.390, inclusive, 459.970 to 459.9729, inclusive or 459.9921 to 459.99938, inclusive for services performed under the direction or control of a holder of a certificate;*
- 6. Been convicted of or entered a plea of guilty or nolo contendere to any crime of which an essential element is dishonesty or which is directly related to any activity for which a certificate is required pursuant to NAC 459.970 to 459.9729, inclusive;*
- 7. Provided services for which a certificate is required pursuant to NAC 459.970 to 459.9729, inclusive, after the certificate has expired or been suspended or revoked;*
- 8. Been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency if at least one of the grounds for discipline is the same as or substantially similar to any grounds set forth in this section or NAC 459.9729;*
- 9. Demonstrated disregard for the health and safety of the public and the environment;*
- 10. Acted outside the rights and privileges of the certification that the person holds;*
- 11. Willfully made any false statement to a governmental agency with regulatory authority, or failed to correct a false statement previously made, that is material to the administration or enforcement of NAC 445A.226 to 445A.22755, inclusive, 445C.010 to 445C.390, inclusive, 459.970 to 459.9729, inclusive or 459.9921 to 459.99938, inclusive, regarding services performed under the direction or control of the holder of a certificate; or*
- 12. Failed to comply with an order issued by the Administrator.*

Sec. 58. NAC 459.9729 is hereby amended to read as follows:

459.9729 1. Each holder of a certificate issued by the Division pursuant to the provisions of NAC 459.970 to 459.9729, inclusive ~~§~~, *and section 33 of this regulation:*

(a) Shall provide services which are ethical, meet the current standards of the profession and which comply with federal, state and local regulations concerning hazardous substances or underground storage tanks.

(b) Is responsible for the work of other persons he or she employs or supervises.

(c) Shall have a copy of his or her certificate at the location where the holder of a certificate is supervising work. Upon the request of the Division, client or potential client, a holder of a certificate shall present the certificate for inspection.

(d) Shall make a written report to the facility owner or operator, within 24 hours, upon the discovery of a release of a hazardous substance or the existence of an unregistered underground storage tank and advise that facility owner or operator of any applicable reporting requirements.

(e) Shall report to the Division the discovery of a release of a hazardous substance which presents an imminent and substantial hazard to human health, public safety or the environment as soon as possible after the holder of a certificate has knowledge of a release.

(f) Shall secure the services of a qualified person to perform any part of his or her job which requires a level of service or skill which he or she is not qualified to provide.

(g) Shall make complete prior disclosures to his or her clients or potential clients of potential conflicts of interest or other circumstances which could influence his or her judgment or the quality of the services the holder of a certificate provides.

(h) Shall not falsify or misrepresent his or her education or experience, the degree of responsibility for prior assignments or the complexity of prior employment or business, relevant factors concerning employers, employees, associates or joint ventures or past accomplishments.

(i) Shall maintain a written record of each project requiring certification for 3 years after the project is completed. The Division may inspect those records during normal business hours and will establish requirements concerning the information which must be included in the records.

2. In addition to the requirements of subsection 1, a provider of an approved underground storage tank training program shall provide to each Class A operator and Class B operator a record in paper or electronic format which includes the information described in 40 C.F.R. § 280.245(b), as that section existed on November 2, 2016.

ATTACHMENT 2:

Cemex Construction Materials Pacific, LLC;

NOAV 2788

Penalty Presentation

Penalty Matrix

SEC Settlement Table

**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 AP1442-3826

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

NOAV: 2788

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.

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) = \$ 600

D. Multiple Emission Unit Violations or Recurring Events:

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

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

II. Economic Benefit

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

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>0%</u>
B. History of Non-compliance		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>200%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 1 =		<u>5%</u>
Total Penalty Adjustment Factors - Sum of A & B:		<u>205%</u>

IV. Total Penalty

<u>\$ 8,400</u> Penalty Subtotal (from Part II)	x	<u>205%</u> Total Adjustment Factors	=	<u>\$ 17,220</u> Total Adjustment
<u>\$ 8,400</u> Penalty Subtotal (from Part II)	+	<u>\$ 17,220</u> Penalty Increase or Decrease	=	<u>\$ 25,620.00</u> Total Penalty

Assessed by: David Dragon

Date: 4/27/2020

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

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

Determining Volume of Release based on opacity:

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

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

Determining Volume of Release based on CEMS or source testing:

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

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

AGENDA ITEM #5: Air Penalty Presentation – Cemex Construction Material Pacific, LLC

Summary of Penalty Recommendations

NDEP is recommending to the State Environmental Commission that a penalty be assessed for Notice of Alleged Violation (NOAV) No. 2788, issued to Cemex Construction Materials Pacific, LLC (Cemex). NDEP is recommending a penalty in the amount of **\$25,620.00**.

Background

Cemex currently holds a Class II Air Quality Operating Permit (AQOP) to operate an aggregate plant under the requirements of AQOP No. AP1442-3826, issued by the Nevada Division of Environmental Protection (NDEP) on January 14, 2020.

On February 25, 2020, NDEP staff observed airborne particulate matter coming from the Cemex Facility on February 25, 2020, but were unable to conduct a site visit that day. On the following day NDEP staff conducted a site visit to identify the cause airborne particulate matter that was observed originating from the facility.

Recommended Penalty No. 1 - \$25,260.00 for NOAV No. 2788

Details of the Violation

During the site visit, NDEP staff observed that the facility was operating fourteen emission units without operating the required air pollution control equipment, as shown in Table 1. Each emission unit listed in Table 1 is required by the AQOP to have water sprays or fogging water sprays operating in the correct position and orientation for controlling emissions, during all periods of operation. Photos #1-4 (see pages 4 & 5) shows examples of the airborne particulate matter and non-functioning water sprays observed during the site visit.

Table 1: Emission Units operating without controls

System	Emission Unit(s)	Description	Control
01	PF1.001	Grizzly Feeder Loading	Fogging water sprays
02	PF1.002	Grizzly Feeder Transfer	Fogging water sprays
03	PF1.003	Jaw Crusher	Fogging water sprays
04	PF1.004	Conveyor Transfer	Fogging water sprays
05	PF1.005	Double Deck Screen	Fogging water sprays
06	PF1.006, & PF1.008 to PF1.011	Conveyor Transfers	Fogging water sprays
23	PF1.066	Aggregate Transfer	Water sprays
24	PF1.067	Jaw Crusher	Water sprays
25	PF1.068	Jaw Under Conveyor	Water sprays
26	PF1.069	Screen	Water sprays

On May 18, 2020, NDEP held an enforcement conference with Cemex to discuss the failure to maintain the air pollution controls and to determine if issuance of NOAV No. 2788 was warranted. Cemex did not provide evidence demonstrating that the violations did not occur. NDEP determined that issuance of NOAV No. 2788 was warranted. No appeal was filed for NOAV No. 2788.

Penalty Calculations

Base Penalty for failure to maintain controls for a Class II Source: \$600

Modifiers for Total Gravity Fine: 1 (event) x 14 (emission units)

Total Gravity Fine: $\$600 \times 1 \times 14 = \$8,400$

Modifiers for Economic Benefit: None

Penalty Adjustment Factors: 5% for history of noncompliance with 1 prior violation within the previous 60 months and 200% for a prior violation of failure to maintain controls within the previous 36 months.

Penalty Adjustment: $\$8,400 \times 205\% = \$17,220$

Final Penalty Calculation: $\$8,400 + \$17,220 = \$25,620.00$

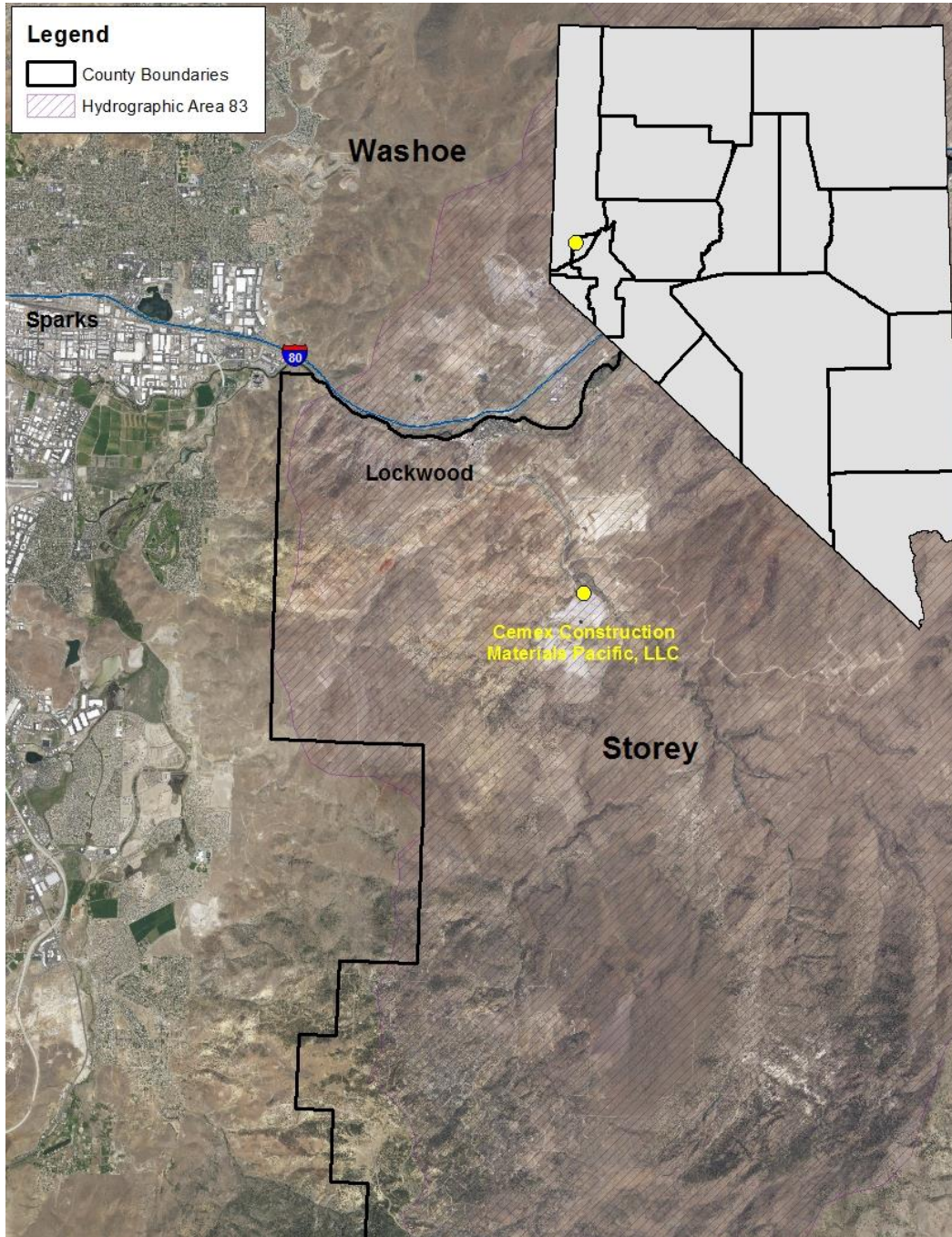
AGENDA ITEM #5 Continued: Facility Location

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 – Map Showing the Location of Cemex and the Surrounding Areas



AGENDA ITEM #5 Continued: Photos for Reference

Photo 1 – Airborne Particulate Matter Coming from the Cemex Facility the Day Before the Site Visit



Photo 2- Water Sprays Not Operating



Photo 3 – Broken Water Supply Line



Photo 4 – Another Example of Water Sprays Not Operating



**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 AP1442-3826

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

NOAV: 2788

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.

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) = \$ 600

D. Multiple Emission Unit Violations or Recurring Events:

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

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

II. Economic Benefit

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

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>0%</u>
B. History of Non-compliance		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>200%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 1 =		<u>5%</u>
Total Penalty Adjustment Factors - Sum of A & B:		<u>205%</u>

IV. Total Penalty

<u>\$ 8,400</u> Penalty Subtotal (from Part II)	x	<u>205%</u> Total Adjustment Factors	=	<u>\$ 17,220</u> Total Adjustment
<u>\$ 8,400</u> Penalty Subtotal (from Part II)	+	<u>\$ 17,220</u> Penalty Increase or Decrease	=	<u>\$ 25,620.00</u> Total Penalty

Assessed by: David Dragon

Date: 4/27/2020

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

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

Determining Volume of Release based on opacity:

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

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

Determining Volume of Release based on CEMS or source testing:

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

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

**Bureau of Air Quality Planning (BAQP) Enforcement Branch
Penalty Recommendations for the December 9, 2020, State Environmental Commission Meeting**

AGENDA ITEM #5	
COMPANY	Cemex Construction Materials Pacific, LLC
COUNTY	Storey
NOAV NUMBER(S)	2788
VIOLATION & PENALTY SUMMARY	<p><u>NOAV 2788</u> Violation: Failure to operate and maintain permit-required air pollution control devices – Pursuant to Nevada Administrative Code (NAC) 445B.275(1)(c) Date of Observation: February 26, 2020 Requirement: Operate and maintain air pollution controls as set forth in the Air Quality Operating Permit.</p> <p>Base Penalty: Administrative Penalty Matrix – Failure to maintain process or controls – Class 2 Source = \$600 Deviation Factors: N/A Multiple Emission Unit Violations or Recurring Events: 14 units = 14 Penalty Subtotal: (\$600 x 14) = \$8,400 Penalty Adjustment Factors: Similar violation within past three years (+200%), All recent violations in previous 5 years (1 violation x 5% = +5%) Final Adjustment Factor: 200% + 5% = +205% Total Penalty: \$8,400 + (\$8,400 x 205%) = \$25,620.00</p>
TOTAL RECOMMENDED PENALTY	\$25,620.00

AGENDA ITEM #6	
COMPANY	Tahoe Western Asphalt, LLC
COUNTY	Carson City
NOAV NUMBER(S)	2783, 2786, 2784
VIOLATION & PENALTY SUMMARY	<p><u>NOAV 2783</u> Violation: Failure to operate and maintain permit-required air pollution control devices – Pursuant to Nevada Administrative Code (NAC) 445B.275(1)(c) Date of Observation: March 23 & 24, 2020 Requirement: Operate and maintain air pollution controls as set forth in the Air Quality Operating Permit. Base Penalty: Administrative Penalty Matrix – Failure to maintain process or controls – Class 2 Source = \$600 Deviation Factors: N/A Multiple Emission Unit Violations or Recurring Events: 1 System Penalty Subtotal: (\$600 x 1) = \$600 Penalty Adjustment Factors: All recent violations in previous 5 years (9 violations x 5% = +45%) Total Penalty: \$600 + (\$600 x 45%) = \$870.00</p>
	<p><u>NOAV 2786</u> Violation: Failure to comply with permitted opacity limits – Pursuant to Nevada Administrative Code (NAC) 445B.275(1)(c) Date of Observation: March 23 & 24, 2020 Requirement: Comply with opacity limits as set forth in the Air Quality Operating Permit. Base Penalty: Administrative Penalty Matrix – Failure to Comply with a Permitted Operating Parameter – Class 2 Source = \$1,000 Deviation Factors: 6 (>50% opacity) Penalty Subtotal: (\$1,000 x 6) = \$6,000 Multiple Emission Unit Violations or Recurring Events: 1 System Penalty Adjustment Factors: All recent violations in the previous 5 years (9 violations x 5% = +45%) Similar violations in the previous 36 months (+200%) Total Penalty: \$6,000 + (\$6,000 x 245%) = \$20,700.00 \$10,000 (1 violation on 1 days so it is capped at \$10,000 per NRS 445B.640.)</p>
	<p><u>NOAV 2784</u> Violation: Failure to conduct permit required recordkeeping and monitoring – Pursuant to Nevada Administrative Code (NAC) 445B.275(1)(e) Date of Observation: March 23 & 24, 2020 Requirement: Monitor and record all data and supporting information as set forth in the Air Quality Operating Permit. Base Penalty: Administrative Penalty Matrix – Failure to Comply with Monitoring, Recordkeeping, Reporting, or Compliance Certification Requirements – Class 2 Source = \$600 Deviation Factors: N/A Multiple Emission Unit Violations or Recurring Events: 4 Systems over 45 months (4 x 45 = 180 violations) Penalty Subtotal: (\$600 x 3 Systems x 45 months) = \$81,000 Penalty Adjustment Factors: All recent violations in previous 5 years (9 violations x 5% = +45%) Total Penalty: \$81,000 + (\$81,000 x 45%) = \$117,450.00</p>
	TOTAL RECOMMENDED PENALTY

ATTACHMENT 3:

Tahoe Western Asphalt LLC;

Request for Continuation

Penalty Presentation

NOAV 2783

NOAV 2784

NOAV 2786

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

For: Tahoe Western Asphalt - FIN A1969 - Permit AP1611-3748

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

NOAV: 2783

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.

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) = \$ 600

D. Multiple Emission Unit Violations or Recurring Events:

$$\frac{\$ 600}{\text{Dollar Amount}} \times \frac{1}{\text{Number of Events}} \times \frac{1}{\text{Number of Units}} = \frac{\$ 600}{\text{Total Gravity Fine}}$$

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

II. Economic Benefit

A.	<u>\$ -</u> Delayed Costs	+	<u>\$ -</u> Avoided Costs	=	<u>\$ -</u> Economic Benefit
Subtotal	<u>\$ 600</u> Total Gravity Fine	+	<u>\$ -</u> Economic Benefit	=	<u>\$ 600</u> Fine Subtotal

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>0%</u>
B. History of Non-compliance		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>0%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 9 =		<u>45%</u>
Total Penalty Adjustment Factors - Sum of A & B:		<u>45%</u>

IV. Total Penalty

<u>\$ 600</u> Penalty Subtotal (from Part II)	x	<u>45%</u> Total Adjustment Factors	=	<u>\$ 270</u> Total Adjustment
<u>\$ 600</u> Penalty Subtotal (from Part II)	+	<u>\$ 270</u> Penalty Increase or Decrease	=	<u>\$ 870.00</u> Total Penalty

Assessed by: Andrew Tucker

Date: 10/15/2020

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

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

Determining Volume of Release based on opacity:

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

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

Determining Volume of Release based on CEMS or source testing:

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

<u>Source & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources: <i>(all pollutants are minor)</i>	$r < 1.2$ $r \geq 1.2$	(none) proportional to r
Major & SM sources: 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
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations**

For: Tahoe Western Asphalt - FIN A1969 - Permit AP1611-3748

Violation: NAC445B.275(1)(e) - Failure to Comply with Monitoring, Recordkeeping, Reporting, or Compliance Certification Requirements

NOAV: 2784

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.

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) = \$ 600

D. Multiple Emission Unit Violations or Recurring Events:

$$\frac{\$ 600}{\text{Dollar Amount}} \times \frac{45}{\text{Number of Months}} \times \frac{3}{\text{Number of Systems}} = \$ 81,000 \text{ Total Gravity Fine}$$

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

II. Economic Benefit

A.	<u>\$ -</u> Delayed Costs	+	<u>\$ -</u> Avoided Costs	=	<u>\$ -</u> Economic Benefit	
Subtotal	<u>\$ 81,000</u> Total Gravity Fine	+	<u>\$ -</u> Economic Benefit	=	<u>\$</u> Fine Subtotal	81,000

III. Penalty Adjustment Factors

A. Mitigating Factors		<u>0%</u>
B. History of Non-compliance		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>0%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 9 =		<u>45%</u>
Total Penalty Adjustment Factors - Sum of A & B:		<u>45%</u>

IV. Total Penalty

<u>\$ 81,000</u> Penalty Subtotal (from Part II)	x	<u>45%</u> Total Adjustment Factors	=	<u>\$ 36,450</u> Total Adjustment
<u>\$ 81,000</u> Penalty Subtotal (from Part II)	+	<u>\$ 36,450</u> Penalty Increase or Decrease	=	<u>\$ 117,450.00</u> Total Penalty

Assessed by: Andrew Tucker

Date: 10/15/2020

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

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

Determining Volume of Release based on opacity:

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

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

Determining Volume of Release based on CEMS or source testing:

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

<u>Source & pollutant info</u>	<u>Emissions/(Permit limit)</u>	<u>Adjustment to Base Penalty</u>
Minor sources: <i>(all pollutants are minor)</i>	$r < 1.2$ $r \geq 1.2$	(none) proportional to r
Major & SM sources: 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
Bureau of Air Pollution Control
Administrative Fine Calculation Worksheet for Emissions Violations**

For: Tahoe Western Asphalt - FIN A1969 - Permit AP1611-3748

Violation: NAC445B.275(1)(c) - Failed Opacity Observation

NOAV: 2786

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.

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

Adjustment to Base Penalty = 6

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: 6

C. Adjusted Base Penalty: Base Penalty (A) x Deviation Factors (B) \$ 6,000

D. Multiple Emission Unit Violations or Recurring Events:

$$\frac{\$ 6,000}{\text{Dollar Amount}} \times \frac{1}{\text{Number of Events}} \times \frac{1}{\text{Number of Units}} = \underline{\underline{\$ 6,000}} \text{ Total Gravity Fine}$$

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

II. Economic Benefit

A.	<u>\$ -</u> Delayed Costs	+	<u>\$ -</u> Avoided Costs	=	<u>\$ -</u> Economic Benefit
Subtotal	<u>\$ 6,000</u> Total Gravity Fine	+	<u>\$ -</u> Economic Benefit	=	<u>\$ 6,000</u> Fine Subtotal

III. Penalty Adjustment Factor

A. Mitigating Factors		<u>0%</u>
B. History of Non-compliance		
1. Similar Violations (NOAVs) in previous 5 years:		
Within previous year (12 months) = 3X (+300%)		
Within previous three years (36 months) = 2X (+200%)		
Occurring over three years before = 1.5X (+150%)		<u>200%</u>
2. All Recent Violations (NOAVs) in previous 5 years:		
(+5%) X (Number of recent Violations) = 5% X 9 =		<u>45%</u>
Total Penalty Adjustment Factors - Sum of A &		<u>245%</u>

IV. Total Penalty

<u>\$ 6,000</u> Penalty Subtotal (from Part II)	x	<u>245%</u> Total Adjustment Factors	=	<u>\$ 14,700</u> Total Adjustment
<u>\$ 6,000</u> Penalty Subtotal (from Part II)	+	<u>\$ 14,700</u> Penalty Increase or Decrease	=	<u>\$ 20,700.00</u> Total Penalty

Assessed by: Andrew Tucker

Date: 10/15/2020

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

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

Determining Volume of Release based on opacity:

1	1.5	2.5	4	6
Negligible amount	Relatively low amount	Medium amount	Relatively high amount	Extremely high amount

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

Determining Volume of Release based on CEMS or source testing:

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

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

AGENDA ITEM #6: Air Penalty Presentation - Tahoe Western Asphalt, LLC

Summary of Penalty Recommendations

NDEP is recommending to the State Environmental Commission that penalties be assessed for Notices of Alleged Violation (NOAV) Nos. 2783, 2786, and 2784, issued to Tahoe Western Asphalt, LLC (TWA). NDEP is recommending penalties in the amounts of \$870.00, \$10,000.00, and \$117,450.00, respectively. The total recommended penalty for the three NOAVs is **\$128,320.00**.

Background

TWA currently holds Class II Air Quality Operating Permit (AQOP) AP1611-3748 to operate a hot mix asphalt plant. The AQOP was issued by the Nevada Division of Environmental Protection (NDEP) on May 23, 2016.

On the morning of March 23, 2020, NDEP received reports from the public that there was smoke coming from the TWA facility. NDEP dispatched compliance inspectors to investigate and after arriving at a nearby location with a vantage point of the entire TWA facility, NDEP staff observed that part of TWA's process equipment was exceeding the opacity limits specified in the AQOP. Later in the day on March 23, 2020 and on March 24, 2020, NDEP staff conducted an inspection of the TWA facility and found that the facility was not in compliance with several permit and regulatory requirements.

On April 1, 2020, NDEP issued Draft Notices of Alleged Violation (NOAV) & Orders for the alleged noncompliance with the AQOP and regulatory requirements. An enforcement conference between TWA and NDEP was held by teleconference on April 16, 2020. The conference was held to allow TWA the opportunity to provide evidence as to why NDEP should not issue the NOAVs. TWA chose to have their legal counsel, Mr. Jeremy B. Clarke, Esq., attend the conference as the sole representative for TWA. Several additional teleconferences on subsequent dates were held to allow Mr. Clarke to confer with TWA and provide responses to NDEP's questions. After the conclusion of the conferences, NDEP determined that issuance of NOAV Nos. 2783, 2786, and 2784 was warranted and issued each of them on August 14, 2020. No appeals have been filed for NOAV Nos. 2783, 2786, or 2784.

Specific information about the violations and penalty recommendation calculations for NOAV Nos. 2783, 2786, and 2784 is included in the respective penalty recommendation sections.

Recommended Penalty No. 1 - \$870 for NOAV No. 2783

Details of the Violation

During the inspection on March 23, 2020, NDEP staff attempted to verify that the emission controls were present and operational. The equipment was not in operation at the time of the inspection, so TWA started the equipment at NDEP's request. NDEP staff observed that the permit-required fogging water spray (FWS) for one emission unit under System 1 (PF1.002) was installed but was not operating. Photo #1 (see page 6) shows the water spray for PF1.002 not in operation. The Responsible Official (RO) for TWA stated that the FWS had not been operating because they freeze in the cold weather. NDEP staff advised the RO that the air pollution controls must be operating if the process equipment is operating.

On March 24, 2020, NDEP staff returned to the facility to review records that were not on-site on the previous day. While on-site, NDEP staff observed that the plant was in operation, but the fogging water spray for System 1 (PF1.002) was not in operation, confirming the observations of the day before. The penalty recommendation was calculated based on a single-event violation.

Penalty Calculations

Base Penalty for failure to maintain controls for a Class II Source: \$600

Modifiers for Total Gravity Fine: None

Total Gravity Fine: \$600

Modifiers for Economic Benefit: None

Penalty Adjustment Factors: 45% for history of noncompliance with 9 prior violations within the previous 60 months.

Penalty Adjustment: $600 \times 45\% = \$270$

Final Penalty Calculation: $\$600 + \$270 = \$870.00$

Recommended Penalty No. 2 - \$10,000 for NOAV No. 2786

Details of the Violation

On the morning of March 23, 2020, NDEP staff were following up on complaints of smoke coming from the TWA facility and observed opacity emitting from the stack for System 2 - Asphalt Plant Drum Dryer Mixer/Burner (S2.001). NDEP staff conducted four EPA Method 9 Visual Emission Observations (VEO) tests on S2.001 between 8:50 am and 10:00 am. Each of the four tests constitutes a performance measure for the opacity emissions from system 2. The 6-minute average opacity readings for each of the Method 9 VEO tests conducted were 62.5%, 25%, 63.5%, and 53.5%.

The AQOP, Nevada Administrative Code 445B.22017, and federal regulatory requirements under Title 40 of the Code of Federal Regulations (CFR) Part 60.92(a)(2) restricts opacity greater than 20% to be emitted from S2.001. The individual opacity readings that were taken during each of the four Method 9 VEOs are listed in Table 1.

Table 1: Method 9 Visual Emission Observations. For each test, observations are taken every 15 seconds for 6 minutes (total of 24 observations). The result of each test is the average of all 24 observations.

EPA Method 9 VEO #1					EPA Method 9 VEO #2				
Date: 3/23/2020					Date: 3/23/2020				
Time: 8:53am - 8:59am					Time: 8:59am - 9:05am				
Seconds:	0	15	30	45	Seconds:	0	15	30	45
Minute: 1	45%	45%	45%	45%	Minute: 1	45%	50%	50%	50%
Minute: 2	50%	50%	60%	70%	Minute: 2	45%	30%	25%	30%
Minute: 3	70%	70%	70%	75%	Minute: 3	25%	25%	20%	20%
Minute: 4	70%	75%	70%	70%	Minute: 4	20%	20%	15%	15%
Minute: 5	65%	65%	70%	60%	Minute: 5	15%	15%	15%	15%
Minute: 6	60%	70%	70%	60%	Minute: 6	15%	15%	10%	15%
6-Minute Average:			62.5%		6-Minute Average:			25%	
EPA Method 9 VEO #3					EPA Method 9 VEO #4				
Date: 3/23/2020					Date: 3/23/2020				
Time: 9:31am - 9:37am					Time: 9:41am - 9:47am				
Seconds:	0	15	30	45	Seconds:	0	15	30	45
Minute: 1	75%	75%	70%	75%	Minute: 1	90%	90%	90%	95%
Minute: 2	80%	80%	75%	70%	Minute: 2	90%	95%	95%	95%
Minute: 3	70%	70%	75%	70%	Minute: 3	100%	85%	40%	40%
Minute: 4	80%	90%	100%	90%	Minute: 4	40%	35%	35%	30%
Minute: 5	80%	90%	40%	15%	Minute: 5	30%	25%	20%	15%
Minute: 6	15%	10%	15%	15%	Minute: 6	15%	10%	10%	15%
6-Minute Average:			63.5%		6-Minute Average:			53.5%	

Photo #2 (see page 7) shows the TWA facility with a significant amount of opacity emitting from the stack for S2.001 during the high opacity events observed on March 23, 2020. The EPA Method 9 VEO Forms are included in Appendix A. The recommended penalty was based on a single-event violation.

Penalty Calculations

Base Penalty for failure exceeding permitted opacity limits for a Class II Source: \$1,000

Modifiers for Total Gravity Fine: 6 for the opacity being greater than 50%

Total Gravity Fine: \$1,000 x 6 = \$6,000

Modifiers for Economic Benefit: None

Penalty Adjustment Factors: 45% for history of noncompliance with 9 prior violations within the previous 60 months and **200%** for a prior opacity violation within the previous 36 months.

Penalty Adjustment: \$6,000 x 245% = \$14,700

Final Penalty Calculation: The violation was observed on a single day and the calculated penalty (\$6,000 + \$14,700 = \$20,700.00) exceeds the per day per violation penalty cap of \$10,000 pursuant to NRS 445B.470. **The final recommended penalty is \$10,000.**

Recommended Penalty No. 3 - \$117,450.00 for NOAV No. 2784

Details of the Violation

During the inspection on March 23, 2020, NDEP staff attempted to conduct a complete records review. At that time TWA was only able to provide records for daily production totals, operational dates, and total daily hours of operation for one system from January 4, 2019, to November 23, 2019. On March 24, 2020, NDEP staff reviewed the remaining records that TWA was able to produce. The provided records consisted of partial hours of operation logs from April 8, 2017 to November 25, 2019, and various EPA Method 9 Visual Emission Observations. The permit requires TWA to maintain a contemporaneous log of each recordkeeping parameter specified in the AQOP. Based on the records provided during the inspection, TWA had not met the monitoring and recordkeeping requirements for Systems 1 through 5.

Subsequent to the enforcement conference and the issuance of NOAV No. 2784, NDEP Enforcement Staff became aware that the equipment for Systems 4 & 5 have not been installed in a functional state, as a result, penalties are not being pursued for any missing records associated with Systems 4 & 5.

TWA has received three prior minor violations for failing to comply with reporting requirements within 60 months, therefore pursuant to NAC 445B.275 the recordkeeping violations associated with NOAV No. 2784 are major violations instead of minor violations.

The process equipment that TWA operates emit a variety of different air pollutants. Some of those air pollutants such as PM_{2.5}, PM₁₀, and nitrogen dioxide (NO₂) can cause adverse health effects under both acute and prolonged exposure. These pollutants are known to cause a range of health effects that can be relatively mild, such as irritation of the airways and coughing, to more serious effects such as decreased lung function, heart attacks, and premature death. State and federal air quality standards set limits for these air pollutants concentrations so that human health is protected. Through the modeling that is a key part of the evaluation and issuance of a permit, NDEP is assured that the operating conditions requested by a facility are protective of state and federal air quality standards. Recordkeeping and monitoring of emission units are crucial elements in demonstrating that a facility is operating within the limits that meet federal and state ambient air quality standards. In the absence of proper recordkeeping and monitoring, it is not possible to verify that a facility is operating in such a way that is protective to human health.

The NDEP recommends a penalty that is less than the maximum allowed for the violations under the penalty matrix established by the State Environmental Commission. The penalty matrix recommends that for failure to conduct required monitoring, recordkeeping, or reporting, the penalty would be calculated based on the reporting period or per [emission] unit-day. In consideration of the long period without proper recordkeeping, NDEP staff opted to calculate the recommended penalty on a system-month basis, instead of unit-day. Had NDEP used a unit-day approach, the calculated penalty would have been over \$3,500,000. The system-month approach is consistent with the daily/weekly/monthly discretionary time intervals allowed for other violation types in the penalty matrix. In addition, the recordkeeping requirements in TWA's AQOP require that records for Systems 1, 2, and 3 be collected for each system and not each individual emission unit (multiple units are organized in a system), so the recommended penalty is effectively calculated on each system-month.

Penalty Calculations

Base Penalty for failure a major violation for recordkeeping violations at a Class II Source: \$600

Modifiers for total Gravity Fine: 3 Systems x 45 months

Total Gravity Fine: \$600 x 3 Systems x 45 Months = \$81,000

Modifiers for Economic Benefit: None

Penalty Adjustment Factors: 45% for history of noncompliance with 9 prior violations within the previous 60 months.

Penalty Adjustment: \$81,000 x 45% = \$36,450

Final Penalty Calculation: \$81,000 + \$36,450 = \$117,450.00

AGENDA ITEM #6 Continued: Facility Location

Facility Location - Tahoe Western Asphalt, LLC, Carson City

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

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

Figure 1 – Map Showing the Location of TWA and the Surrounding Areas



AGENDA ITEM #6 Continued: Photos for Reference

Photo 1 – Air Pollution Control Not in Operation



Photo 2- System 02 (S2.001) Emitting High Opacity Smoke



Appendix A

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME
Tahoe Western Asphalt

STREET ADDRESS
8013 US 50 East

CITY
Carson City

STATE
NV

ZIP
89721

PHONE (KEY CONTACT)

SOURCE ID NUMBER

OBSERVATION DATE		START TIME				END TIME
3-23-2020		8:53				8:59
SEC	0	15	30	45	COMMENTS	
MIN						
1	45	45	45	45	--	
2	50	50	60	70		
3	70	70	70	75		
4	70	75	70	70		
5	65	65	70	60		
6	60	70	70	60		
7					Avg = 62.5%	
8						
9						
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12						
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30						

PROCESS EQUIPMENT **Asphalt Drum Dryer Mixer**

OPERATING MODE **Operating**

CONTROL EQUIPMENT **Baghouse Burner**

OPERATING MODE **Operating**

DESCRIBE EMISSION POINT
Vertical, Uncapped, Circular Stack

HEIGHT ABOVE GROUND LEVEL
20'

HEIGHT RELATIVE TO OBSERVER
Start **10'** End **10'**

DISTANCE FROM OBSERVER
Start **1,200'** End **1,200'**

DIRECTION FROM OBSERVER
Start **NW** End **NW**

DESCRIBE EMISSIONS

Start **Trailing Plume** End **Same**

EMISSION COLOR
Start **White** End **Brown**

IF WATER DROPLET PLUME
Attached Detached

POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED
Start **At Outlet** End **At Outlet**

DESCRIBE PLUME BACKGROUND

Start **Brown Hill/Green Bushes** End **Same**

BACKGROUND COLOR
Start **Green** End **Brown**

SKY CONDITIONS
Start **Partly Cloudy** End **Partly Cloudy**

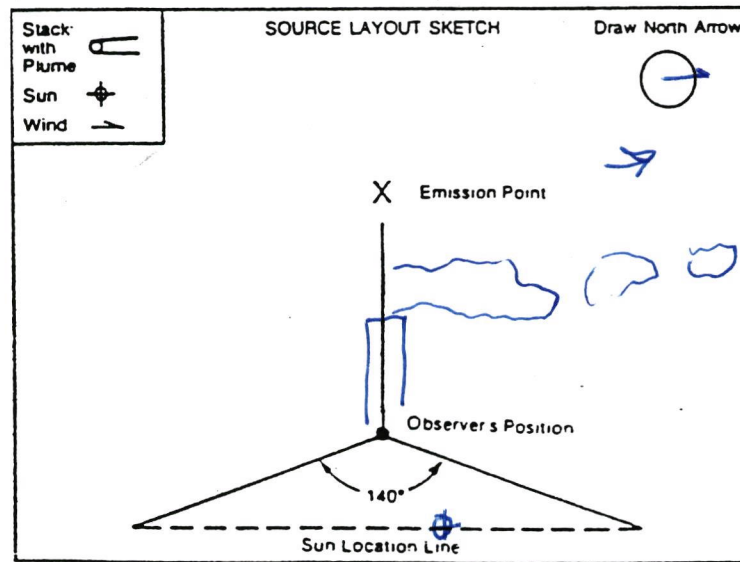
WIND SPEED
Start **5-10 MPH** End **5-10 MPH**

WIND DIRECTION
From Start **West** End **West**

AMBIENT TEMP
Start **37°** End **37°**

WET BULB TEMP

RH. percent



ADDITIONAL INFORMATION

OBSERVER'S NAME (PRINT)
Chad Myers

OBSERVER'S SIGNATURE
Chad Myers

DATE
3-23-2020

ORGANIZATION
NDEP-BAPC

CERTIFIED BY
Koontz

DATE
10-24-2019

CONTINUED ON VEO FORM NUMBER

VISIBLE EMISSION OBSERVATION FORM

This form is designed to be used in conjunction with EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources." Temporal changes in emission color, plume water droplet content, background color, sky conditions, observer position, etc. should be noted in the comments section adjacent to each minute of readings. Any information not dealt with elsewhere on the form should be noted under additional information. Following are brief descriptions of the type of information that needs to be entered on the form; for a more detailed discussion of each part of the form, refer to "Instructions for Use of Visible Emission Observation Form."

- **Company Name** - full company name, parent company or division or subsidiary information, if necessary.
- **Street Address** - street (not mailing or home office) address of facility where VE observation is being made.
- **Phone (Key Contact)** - number for appropriate contact.
- **Source ID Number** - number from NEDS, CDS, agency file, etc.
- **Process Equipment, Operating Mode** - brief description of process equipment (include type of facility) and operating rate, % capacity, and/or mode (e.g., charging, tapping, shut down).
- **Control Equipment, Operating Mode** - specify type of control device(s) and % utilization, control efficiency.
- **Describe Emission Point** - for identification purposes, stack or emission point appearance, location, and geometry; and whether emissions are confined (have a specifically designed outlet) or unconfined (fugitive).
- **Height Above Ground Level** - stack or emission point height relative to ground level; can use engineering drawings, Abney level, or clinometer.
- **Height Relative to Observer** - indicate height of emission point relative to the observation point.
- **Distance From Observer** - distance to emission point; can use rangefinder or map.
- **Direction From Observer** - direction to emission point; can use compass or map to estimate to eight points of compass.
- **Describe Emissions** - include physical characteristics and plume behavior (e.g., looping, lacy, condensing, fumigating, secondary particle formation, distance plume visible, etc.).
- **Emission Color** - gray, brown, white, red, black, etc. Note color changes in comments section.
- **If Water Droplet Plume** - Check "attached" if water droplet plume forms prior to exiting stack, and "detached" if water droplet plume forms after exiting stack.
- **Point in the Plume at Which Opacity was Determined** - describe physical location in plume where readings were made (e.g., 1 ft. above stack exit or 10 ft. after dissipation of water plume).
- **Describe Plume Background** - object plume is read against, include texture and atmospheric conditions (e.g., hazy).
- **Background Color** - sky blue, gray-white, new leaf green, etc.
- **Sky Conditions** - indicate cloud cover by percentage or by description (clear, scattered, broken, overcast).
- **Required by Reference 9:** other items recommended
- **Wind Speed** - record wind speed; can use Beaufort wind scale or hand-held anemometer to estimate.
- **Wind Direction** - direction from which wind is blowing; can use compass to estimate to eight points.
- **Ambient Temperature** - in °F or °C.
- **Wet Bulb Temperature** - can be measured using a sling psychrometer.
- **Relative Humidity** - can be measured using a sling psychrometer; use local U.S. Weather Bureau measurements only if nearby.
- **Source Layout Sketch** - include wind direction, sun position, associated stacks, roads, and other landmarks to fully identify location of emission point and observer position.
- **Draw North Arrow** - to determine, point line of sight in direction of emission point, place compass beside circle, and draw in arrow parallel to compass needle.
- **Sun's Location** - point line of sight in direction of emission point, move pen upright along sun location line, mark location of sun when pen's shadow crosses the observer's position.
- **Additional Information** - factual conditions or deviations not addressed elsewhere on form.
- **Observation Date** - date observations conducted.
- **Start Time, End Time** - beginning and end times of observation period (e.g., 1635 or 4:35 p.m.).
- **Data Set** - percent opacity to nearest 5%; enter from left to right starting in left column. Use a second (third, etc.) form, if readings continue beyond 30 minutes. Use dash (-) for readings not made; explain in adjacent comments section.
- **Comments** - note changing observation conditions, plume characteristics, and/or reasons for missed readings.
- **Observer's Name** - print in full.
- **Observer's Signature, Date** - sign and date after performing VE observation.
- **Organization** - observer's employer.
- **Certified By, Date** - name of "smoke school" certifying observer and date of most recent certification.
- **Continued on VEO Form Number** - note the 5-digit number of the VE Observation Form where the observations from the form in use are continued.

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME
Tahoe Western Asphalt

STREET ADDRESS
8013 US 50 East

CITY
Carson City

STATE
NV

ZIP
89721

PHONE (KEY CONTACT)

SOURCE ID NUMBER

OBSERVATION DATE		START TIME		END TIME	COMMENTS
3-23-2020		8:59:30		9:05:30	
SEC	0	15	30	45	COMMENTS
MN					
1	45	50	50	50	
2	45	30	25	30	
3	25	25	20	20	
4	20	20	15	15	
5	15	15	15	15	
6	15	15	10	15	
7					Avg = 25.0%
8					
9					
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29					
30					

PROCESS EQUIPMENT **Asphalt Drum Dryer Mixer/**

OPERATING MODE

CONTROL EQUIPMENT **Baghouse Burner**

OPERATING MODE

DESCRIBE EMISSION POINT
Vertical, Uncapped, Circular Stack

HEIGHT ABOVE GROUND LEVEL
20'

HEIGHT RELATIVE TO OBSERVER
Start **10'** End **10'**

DISTANCE FROM OBSERVER
Start **1,200'** End **1,200'**

DIRECTION FROM OBSERVER
Start **NW** End **NW**

DESCRIBE EMISSIONS
Start **Trailing Plume** End **Same**

EMISSION COLOR
Start **White/Brown** End **Brown**

IF WATER DROPLET PLUME
Attached Detached

POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED
Start **At Outlet** End **At Outlet**

DESCRIBE PLUME BACKGROUND
Start **Brown Hill/Green Bushes** End **Same**

BACKGROUND COLOR
Start **Brown/Green** End **Brown/Green**

SKY CONDITIONS
Start **Partly Cloudy** End **Partly Cloudy**

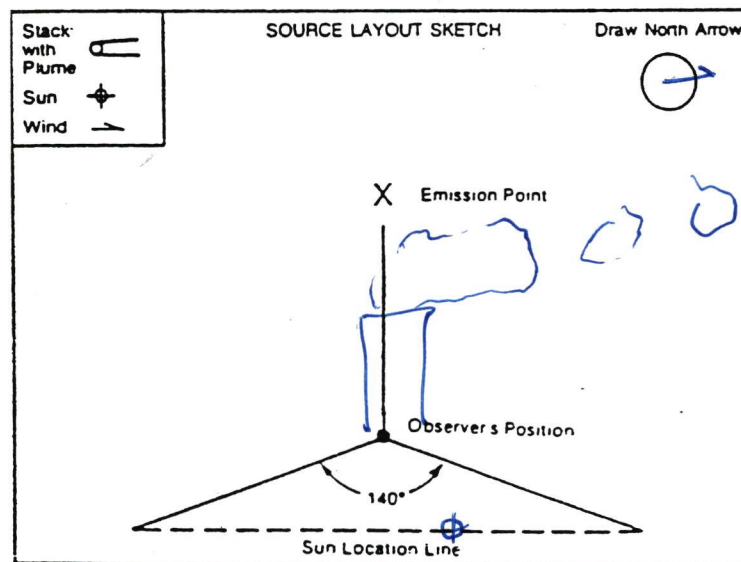
WIND SPEED
Start **5-10 MPH** End **5-10 MPH**

WIND DIRECTION
Start **From West** End **From West**

AMBIENT TEMP
Start **37°** End **37°**

WET BULB TEMP

RH, percent



ADDITIONAL INFORMATION

OBSERVER'S NAME (PRINT)
Chad Myers

OBSERVER'S SIGNATURE
Chad Myers

DATE
3-23-2020

ORGANIZATION
NOEP-BAPC

CERTIFIED BY
Koontz

DATE
10-24-2019

VISIBLE EMISSION OBSERVATION FORM

This form is designed to be used in conjunction with EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources." Temporal changes in emission color, plume water droplet content, background color, sky conditions, observer position, etc. should be noted in the comments section adjacent to each minute of readings. Any information not dealt with elsewhere on the form should be noted under additional information. Following are brief descriptions of the type of information that needs to be entered on the form; for a more detailed discussion of each part of the form, refer to "Instructions for Use of Visible Emission Observation Form."

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- * **Street Address** - street (not mailing or home office) address of facility where VE observation is being made.
- Phone (Key Contact) - number for appropriate contact.
- Source ID Number - number from NEDS, CDS, agency file, etc.
- * **Process Equipment, Operating Mode** - brief description of process equipment (include type of facility) and operating rate, % capacity, and/or mode (e.g., charging, tapping, shut down).
- * **Control Equipment, Operating Mode** - specify type of control device(s) and % utilization, control efficiency.
- * **Describe Emission Point** - for identification purposes, stack or emission point appearance, location, and geometry; and whether emissions are confined (have a specifically designed outlet) or unconfined (fugitive).
- * **Height Above Ground Level** - stack or emission point height relative to ground level; can use engineering drawings, Abney level, or clinometer.
- Height Relative to Observer - indicate height of emission point relative to the observation point.
- * **Distance From Observer** - distance to emission point; can use rangefinder or map.
- * **Direction From Observer** - direction to emission point; can use compass or map to estimate to eight points of compass.
- * **Describe Emissions** - include physical characteristics and plume behavior (e.g., looping, lacy, condensing, fumigating, secondary particle formation, distance plume visible, etc.).
- * **Emission Color** - gray, brown, white, red, black, etc. Note color changes in comments section.
- * **If Water Droplet Plume** - Check "attached" if water droplet plume forms prior to exiting stack, and "detached" if water droplet plume forms after exiting stack.
- * **Point in the Plume at Which Opacity was Determined** - describe physical location in plume where readings were made (e.g., 1 ft. above stack exit or 10 ft. after dissipation of water plume).
- * **Describe Plume Background** - object plume is read against, include texture and atmospheric conditions (e.g., hazy).
- * **Background Color** - sky blue, gray-white, new leaf green, etc.
- * **Sky Conditions** - indicate cloud cover by percentage or by description (clear, scattered, broken, overcast).
- * **Wind Speed** - record wind speed; can use Beaufort wind scale or hand-held anemometer to estimate.
- * **Wind Direction** - direction from which wind is blowing; can use compass to estimate to eight points.
- * **Ambient Temperature** - in °F or °C.
- Wet Bulb Temperature - can be measured using a sling psychrometer.
- Relative Humidity - can be measured using a sling psychrometer; use local U.S. Weather Bureau measurements only if nearby.
- * **Source Layout Sketch** - include wind direction, sun position, associated stacks, roads, and other landmarks to fully identify location of emission point and observer position.
- Draw North Arrow - to determine, point line of sight in direction of emission point, place compass beside circle, and draw in arrow parallel to compass needle.
- Sun's Location - point line of sight in direction of emission point, move pen upright along sun location line, mark location of sun when pen's shadow crosses the observer's position.
- Additional Information - factual conditions or deviations not addressed elsewhere on form.
- * **Observation Date** - date observations conducted.
- * **Start Time, End Time** - beginning and end times of observation period (e.g., 1635 or 4:35 p.m.).
- * **Data Set** - percent opacity to nearest 5%; enter from left to right starting in left column. Use a second (third, etc.) form, if readings continue beyond 30 minutes. Use dash (-) for readings not made; explain in adjacent comments section.
- Comments - note changing observation conditions, plume characteristics, and/or reasons for missed readings.
- * **Observer's Name** - print in full.
- Observer's Signature, Date - sign and date after performing VE observation.
- * **Organization** - observer's employer.
- * **Certified By, Date** - name of "smoke school" certifying observer and date of most recent certification.
- Continued on VEO Form Number - note the 5-digit number of the VE Observation Form where the observations from the form in use are continued.
- * **Required by Reference 9**: other items recommended

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME
TAHOE WESTERN ASPHALT

STREET ADDRESS
8013 US 50 EAST

CITY
CARSON

STATE
NV

ZIP
89721

PHONE (KEY CONTACT)
775-309-7176

SOURCE ID NUMBER

PROCESS EQUIPMENT
DRUM DRYER / MIXER

OPERATING MODE
OPERATING

CONTROL EQUIPMENT
BAGHOUSE

OPERATING MODE
OPERATING

DESCRIBE EMISSION POINT
VERTICAL, UNCAPPED, CIRCULAR STACK

HEIGHT ABOVE GROUND LEVEL
≈ 20'

HEIGHT RELATIVE TO OBSERVER
Start *10'* End *10'*

DISTANCE FROM OBSERVER
Start *1,200'* End *1,200'*

DIRECTION FROM OBSERVER
Start *NW* End *NW*

DESCRIBE EMISSIONS

Start *TRAILING PLUME* End *SAME BUT FAINT*

EMISSION COLOR
Start *WHT/GR* End *WHT/GR*

IF WATER DROPLET PLUME
Attached Detached

POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED
Start *AT OUTLET* End *AT OUTLET*

DESCRIBE PLUME BACKGROUND

Start *BR HILLSIDE / GR TREES* End *SAME*

BACKGROUND COLOR
Start *BR/GR* End *BR/GR*

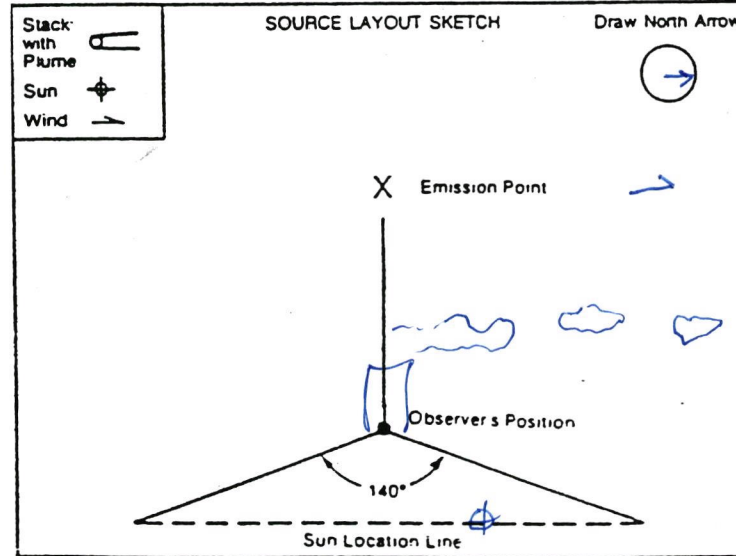
SKY CONDITIONS
Start *PC* End *PC*

WIND DIRECTION
Start *E* End *E*

WIND SPEED
Start *8 MPH* End *8 MPH*

AMBIENT TEMP
Start *37* End *37*

WET BULB TEMP
RH, percent



ADDITIONAL INFORMATION

OBSERVATION DATE		START TIME				END TIME
<i>3-23-2020</i>		<i>9:31</i>				<i>9:37</i>
SEC	0	15	30	45	COMMENTS	
MN						
1	<i>75</i>	<i>75</i>	<i>70</i>	<i>75</i>		
2	<i>80</i>	<i>80</i>	<i>75</i>	<i>70</i>		
3	<i>70</i>	<i>70</i>	<i>75</i>	<i>70</i>		
4	<i>80</i>	<i>90</i>	<i>100</i>	<i>90</i>		
5	<i>80</i>	<i>90</i>	<i>40</i>	<i>15</i>		
6	<i>15</i>	<i>10</i>	<i>15</i>	<i>15</i>		
7					<i>AVG = 63.54</i>	
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OBSERVER'S NAME (PRINT)
NATHAN RASH

OBSERVER'S SIGNATURE
Nathan Rash

ORGANIZATION
NDEP / BAPC

CERTIFIED BY
KOONTZ

DATE
3-23-20

DATE
10-24-19

CONTINUED ON VEO FORM NUMBER

VISIBLE EMISSION OBSERVATION FORM

This form is designed to be used in conjunction with EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources." Temporal changes in emission color, plume water droplet content, background color, sky conditions, observer position, etc. should be noted in the comments section adjacent to each minute of readings. Any information not dealt with elsewhere on the form should be noted under additional information. Following are brief descriptions of the type of information that needs to be entered on the form; for a more detailed discussion of each part of the form, refer to "Instructions for Use of Visible Emission Observation Form."

- **Company Name** - full company name, parent company or division or subsidiary information, if necessary.
- **Street Address** - street (not mailing or home office) address of facility where VE observation is being made.
- **Phone (Key Contact)** - number for appropriate contact.
- **Source ID Number** - number from NEDS, CDS, agency file, etc.
- **Process Equipment, Operating Mode** - brief description of process equipment (include type of facility) and operating rate, % capacity, and/or mode (e.g. charging, tapping, shut down).
- **Control Equipment, Operating Mode** - specify type of control device(s) and % utilization, control efficiency.
- **Describe Emission Point** - for identification purposes, stack or emission point appearance, location, and geometry; and whether emissions are confined (have a specifically designed outlet) or unconfined (fugitive).
- **Height Above Ground Level** - stack or emission point height relative to ground level; can use engineering drawings, Abney level, or clinometer.
Height Relative to Observer - indicate height of emission point relative to the observation point.
- **Distance From Observer** - distance to emission point; can use rangefinder or map.
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- **Describe Emissions** - include physical characteristics and plume behavior (e.g., looping, lacy, condensing, fumigating, secondary particle formation, distance plume visible, etc.).
- **Emission Color** - gray, brown, white, red, black, etc. Note color changes in comments section.
- **If Water Droplet Plume** - Check "attached" if water droplet plume forms prior to exiting stack, and "detached" if water droplet plume forms after exiting stack.
- **Point in the Plume at Which Opacity was Determined** - describe physical location in plume where readings were made (e.g., 1 ft. above stack exit or 10 ft. after dissipation of water plume).
- **Describe Plume Background** - object plume is read against, include texture and atmospheric conditions (e.g., hazy).
- **Background Color** - sky blue, gray-white, new leaf green, etc.
- **Sky Conditions** - indicate cloud cover by percentage or by description (clear, scattered, broken, overcast).
- **Required by Reference 9:** other items recommended
- **Wind Speed** - record wind speed; can use Beaufort wind scale or hand-held anemometer to estimate.
- **Wind Direction** - direction from which wind is blowing; can use compass to estimate to eight points.
- **Ambient Temperature** - in °F or °C.
Wet Bulb Temperature - can be measured using a sling psychrometer.
Relative Humidity - can be measured using a sling psychrometer; use local U.S. Weather Bureau measurements only if nearby.
- **Source Layout Sketch** - include wind direction, sun position, associated stacks, roads, and other landmarks to fully identify location of emission point and observer position.
Draw North Arrow - to determine, point line of sight in direction of emission point, place compass beside circle, and draw in arrow parallel to compass needle.
Sun's Location - point line of sight in direction of emission point, move pen upright along sun location line, mark location of sun when pen's shadow crosses the observer's position.
Additional Information - factual conditions or deviations not addressed elsewhere on form.
- **Observation Date** - date observations conducted.
- **Start Time, End Time** - beginning and end times of observation period (e.g., 1635 or 4:35 p.m.).
- **Data Set** - percent opacity to nearest 5%; enter from left to right starting in left column. Use a second (third, etc.) form, if readings continue beyond 30 minutes. Use dash (-) for readings not made; explain in adjacent comments section.
Comments - note changing observation conditions, plume characteristics, and/or reasons for missed readings.
- **Observer's Name** - print in full.
Observer's Signature, Date - sign and date after performing VE observation.
- **Organization** - observer's employer.
- **Certified By, Date** - name of "smoke school" certifying observer and date of most recent certification.
Continued on VEO Form Number - note the 5-digit number of the VE Observation Form where the observations from the form in use are continued.

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME
TAHOE WESTERN

STREET ADDRESS
8013 US 90 EAST

CITY
CARSON

STATE
NV

ZIP
89721

PHONE (KEY CONTACT)
775-309-7176

SOURCE ID NUMBER
A1969

PROCESS EQUIPMENT
DRUM DRYER / MIXER

OPERATING MODE
OPERATING

CONTROL EQUIPMENT
BAGHOUSE

OPERATING MODE
OPERATING

DESCRIBE EMISSION POINT
VERTICAL, UNCAPPED, CIRCULAR STACK

HEIGHT ABOVE GROUND LEVEL
~ 20'

HEIGHT RELATIVE TO OBSERVER
Start *10'* End *10'*

DISTANCE FROM OBSERVER
Start *1,200'* End *1,200'*

DIRECTION FROM OBSERVER
Start *NW* End *NW*

DESCRIBE EMISSIONS

Start *TRAILING PLUME* End

EMISSION COLOR
Start *WH/GR* End *WH/GR*

IF WATER DROPLET PLUME
Attached Detached

POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED
Start *AT OUTLET* End *AT OUTLET*

DESCRIBE PLUME BACKGROUND

Start *HILLSIDE / TREES* End *HILLSIDE / TREES*

BACKGROUND COLOR
Start *BR/GR* End *BR/GR*

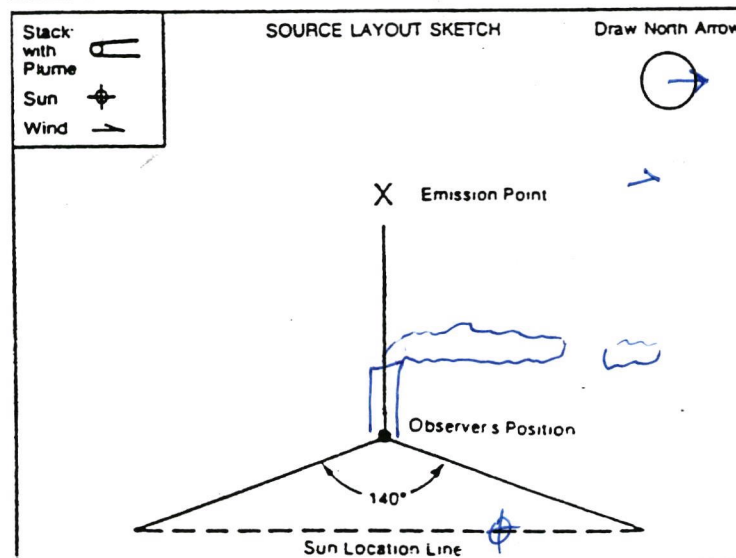
SKY CONDITIONS
Start *PC* End *PC*

WIND SPEED
Start *5-10 MPH* End *5-10 MPH*

WIND DIRECTION
Start End

AMBIENT TEMP
Start *37°* End *37°*

WET BULB TEMP RH, percent



ADDITIONAL INFORMATION

OBSERVATION DATE		START TIME				END TIME
<i>3-23-2020</i>		<i>9:41</i>				<i>9:47</i>
SEC	0	15	30	45	COMMENTS	
MIN						
1	<i>90</i>	<i>90</i>	<i>90</i>	<i>95</i>		
2	<i>90</i>	<i>95</i>	<i>95</i>	<i>95</i>		
3	<i>100</i>	<i>85</i>	<i>40</i>	<i>40</i>		
4	<i>40</i>	<i>35</i>	<i>35</i>	<i>30</i>		
5	<i>30</i>	<i>25</i>	<i>20</i>	<i>15</i>		
6	<i>15</i>	<i>10</i>	<i>10</i>	<i>15</i>		
7					<i>AVG = 53.5</i>	
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OBSERVER'S NAME (PRINT)
NATHAN RASH

OBSERVER'S SIGNATURE
Nathan Rash

DATE
3-23-2020

ORGANIZATION
NDEP / BAPC

CERTIFIED BY
KOONIZ

DATE
10-24-19
4-25-19

CONTINUED ON VEO FORM NUMBER

VISIBLE EMISSION OBSERVATION FORM

This form is designed to be used in conjunction with EPA Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources." Temporal changes in emission color, plume water droplet content, background color, sky conditions, observer position, etc. should be noted in the comments section adjacent to each minute of readings. Any information not dealt with elsewhere on the form should be noted under additional information. Following are brief descriptions of the type of information that needs to be entered on the form; for a more detailed discussion of each part of the form, refer to "Instructions for Use of Visible Emission Observation Form."

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- **Describe Plume Background** - object plume is read against, include texture and atmospheric conditions (e.g., hazy).
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- **Sky Conditions** - indicate cloud cover by percentage or by description (clear, scattered, broken, overcast).
- **Required by Reference 9:** other items recommended
- **Wind Speed** - record wind speed; can use Beaufort wind scale or hand-held anemometer to estimate.
- **Wind Direction** - direction from which wind is blowing; can use compass to estimate to eight points.
- **Ambient Temperature** - in °F or °C.
- **Wet Bulb Temperature** - can be measured using a sling psychrometer.
- **Relative Humidity** - can be measured using a sling psychrometer; use local U.S. Weather Bureau measurements only if nearby.
- **Source Layout Sketch** - include wind direction, sun position, associated stacks, roads, and other landmarks to fully identify location of emission point and observer position.
- **Draw North Arrow** - to determine, point line of sight in direction of emission point, place compass beside circle, and draw in arrow parallel to compass needle.
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- **Additional Information** - factual conditions or deviations not addressed elsewhere on form.
- **Observation Date** - date observations conducted.
- **Start Time, End Time** - beginning and end times of observation period (e.g., 1635 or 4:35 p.m.).
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- **Observer's Signature, Date** - sign and date after performing VE observation.
- **Organization** - observer's employer.
- **Certified By, Date** - name of "smoke school" certifying observer and date of most recent certification.
- **Continued on VEO Form Number** - note the 5-digit number of the VE Observation Form where the observations from the form in use are continued.

SIMONS · HALL · JOHNSTON

November 19, 2020

Via Email: vking@ndep.nv.gov

Valerie King, CPM

State Environmental Commission

901 S. Stewart St., Suite 4001

Carson City, NV 89701

RE: Tahoe Western Asphalt, LLC - December 9, 2020 Meeting

Ms. King:

This office has been retained to represent Tahoe Western Asphalt, LLC ("TWA") to represent its interests regarding the Notice of Alleged Violations and Order Nos. 2783, 2784, and 2786. We are in receipt of your correspondence dated October 28, 2020 setting a hearing date of December 9, 2020 at 9 am.

TWA requests that its hearing in front of the State Environmental Commission set for December 9, 2020 be continued. Pursuant to the Chapter 239 of the Nevada Revised Statutes, our office has made two (2) requests for documents, communications, and information on July 13, 2020 and August 12, 2020 respectively. See FOIA Requests, attached hereto as **Exhibit 1**. Despite these requests being several months old, the Nevada Division of Environmental Protection ("NDEP") and the Attorney General's Office (the "AG") have withheld the totality of the requested information, providing the same monthly explanation:

The Division is still conducting review and compilation of records in our custody to respond to your request. Due to the volume and nature of documents requested, this office has not been able to identify, review, and produce all of the documents requested by today's date. At this time, some of the requested documents are still being reviewed and compiled for production to the Attorney General's Office. I am still in the process of conducting a privilege review of many of the balance of the documents identified for possible production.

See AG Letters dated July 22, 2020, August 20, 2020, August 26, 2020, September 25, 2020, September 28, 2020, and October 29, 2020, attached hereto as **Exhibit 2**. Peter Handy, Esq. uniformly advises that his office anticipates being able to fully respond in another month's time. On October 1, 2020, the NDEP produced 5,518 documents but Mr. Handy cautioned that the AG's office was still conducting a review of documents

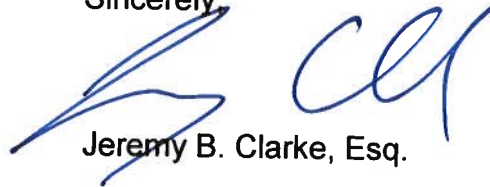
Valerie King
November 19, 2020
Page 2

which "may be privileged or subject to appropriate redaction." See October 1, 2020 Letter from Mr. Handy, attached hereto as **Exhibit 3**. To date, TWA still has not received documents which may be privileged or redacted and has not received a privilege log.

Without the totality of the requested documents, communications, and information, TWA is unable to put forth its defense on December 9, 2020. Further, once received, TWA will need time to review said documents to assess and formulate its potential defenses and/or factors which may mitigate or eliminate any administrative penalties. Accordingly, TWA respectfully requests the meeting set for December 9, 2020 be continued for at least 90 days after TWA receives all documentation from the NDEP.

Should you have any questions, please do not hesitate to reach out to me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JBC', is written over the typed name 'Jeremy B. Clarke, Esq.'.

Jeremy B. Clarke, Esq.

Enclosures
JBC/kr
cc: TWA
Danilo Dragoni
Peter Handy

EXHIBIT 1

EXHIBIT 1

SIMONS · HALL · JOHNSTON

July 13, 2020

Nevada Division of Environmental Protection
Records Request Coordinator
Attn: Jessica Lunz
901 S. Stewart St., Suite 4001
Carson City, NV 89701

RE: Request for Public Records

Dear Ms. Lunz:

Pursuant to Chapter 239 of the Nevada Revised Statutes, and all other applicable laws providing for public access to information and documents, we hereby request that Carson City disclose and provide to this office the following categories of documents and electronically stored information¹:

1. All communications, documents and electronically stored information of Danilo Dragoni discussing or relating to a Tahoe Western Asphalt's ("TWA") air quality permit.²
2. All communications, documents and electronically stored information discussing or related to the April 1, 2020 Draft Notice of Alleged Air Quality Violations and Order Nos. 2783, 2784, 2785 and 2786.

¹ For the purposes of this request, the term "Documents and Electronically Stored Information" shall mean the original, all copies, and all translations of any writing, drawings, graphs, sound recordings, images, and other data or data compilations stored in any medium (paper or other tangible format, as well as any electronic format) from which information can be obtained. Documents and Electronically Stored Information includes, for example (and not by way of limitation) paper documents, photographs, microfilm, microfiche, email, computer tapes, computer printouts, spreadsheets, calendars, appointment books, lists, tabulations, surveys, all other records kept by electronic, photographic or mechanical means, and things similar to the foregoing, however denominated. "Document," as used herein, shall also mean any tape or audible recording, any photograph or motion picture or videotape and any nonidentical copy of any document as previously defined (e.g., any copy of a document as previously defined which differs from any other copy thereof either by virtue of other material appearing thereon, such as handwriting or typewriting, or otherwise). "Electronically Stored Information" includes without limitation email, voicemail, documents, spreadsheets, calendars, and any other information existing in any electronic format (e.g., Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav). The term includes all documents and electronically stored information prepared or received by employees, officers, and agents of the County, as well as all documents within the County's possession or control prepared by others.

² For purposes of this request, the term "relating to" means comprising, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, mentioning, studying, analyzing, discussing, evaluating, showing, illustrating, pertaining or relevant to the item or subject matter set forth in the request.

3. All communications, documents and electronically stored information discussing or related to TWA's June 15, 2020 email request to Danilo Dragoni that the NDEP review a blue smoke kit.
4. All communications, documents and electronically stored information between NDEP personnel and personnel with the Carson City Planning Commission discussing or related to TWA.
5. All communications, documents and electronically stored information between NDEP personnel and any residents of Moundhouse, Nevada.
6. All communications, documents and electronically stored information between NDEP personnel and members of Carson City code enforcement staff.
7. All NDEP internal communications, documents and electronically stored information discussing or related to TWA from January 1, 2018 through the present.

In accordance with the Nevada Supreme Court's decision in *Comstock Residents Association v. Lyon County Board of Commissioners*, 134 Nev. Adv. Op. 19, 414 P.3d 318 (2018), please advise all employees/officials subject to this request to search their own personal files, emails, text messages, accounts, and devices for responsive materials to this request. The Nevada Supreme Court's decision makes clear that agency records are accessible to the public even if they are maintained in a non-governmental (personal) email account or in some other nonofficial location.

I look forward to receiving a reply from the State of Nevada in accordance with the timelines established in NRS Chapter 239. If the State of Nevada decides to withhold any of the requested records, or portions of any requested records, we request that you provide a detailed written explanation of your reasons for withholding the requested information.

Very truly yours,



Mark G. Simons, Esq.
Jeremy B. Clarke, Esq.

MGS/JBC/cb

SIMONS HALL JOHNSTON

August 12, 2020

Nevada Division of Environmental Protection
Records Request Coordinator
Attn: Jessica Lunz
901 S. Stewart St., Suite 4001
Carson City, NV 89701

RE: Request for Public Records

Dear Ms. Lunz:

Pursuant to Chapter 239 of the Nevada Revised Statutes, and all other applicable laws providing for public access to information and documents, we hereby request that Carson City disclose and provide to this office the following categories of documents and electronically stored information¹:

1. All communications, documents and electronically stored information of the NDEP discussing, referring to, or relating to the air quality permit for Brunswick Canyon Materials ("Brunswick") located at 7400 Brunswick Canyon Road, Carson City, Nevada, 89701.²
2. All communications, documents and electronically stored information discussing, referring to, or related to the Brunswick's asphalt plant.

¹ For the purposes of this request, the term "Documents and Electronically Stored Information" shall mean the original, all copies, and all translations of any writing, drawings, graphs, sound recordings, images, and other data or data compilations stored in any medium (paper or other tangible format, as well as any electronic format) from which information can be obtained. Documents and Electronically Stored Information includes, for example (and not by way of limitation) paper documents, photographs, microfilm, microfiche, email, computer tapes, computer printouts, spreadsheets, calendars, appointment books, lists, tabulations, surveys, all other records kept by electronic, photographic or mechanical means, and things similar to the foregoing, however denominated. "Document," as used herein, shall also mean any tape or audible recording, any photograph or motion picture or videotape and any nonidentical copy of any document as previously defined (e.g., any copy of a document as previously defined which differs from any other copy thereof either by virtue of other material appearing thereon, such as handwriting or typewriting, or otherwise). "Electronically Stored Information" includes without limitation email, voicemail, documents, spreadsheets, calendars, and any other information existing in any electronic format (e.g., Word, Excel, Outlook, .pdf, HTML, .tif, .jpeg, .wav). The term includes all documents and electronically stored information prepared or received by employees, officers, and agents of the County, as well as all documents within the County's possession prepared by others.

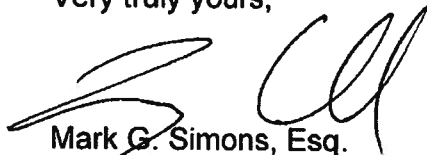
² For purposes of this request, the term "relating to" means comprising, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, containing, mentioning, studying, analyzing, discussing, evaluating, showing, illustrating, pertaining or relevant to the item or subject matter set forth in the request.

3. All communications, documents and electronically stored information discussing, referring to, or related to Brunswick's "fire letter."

In accordance with the Nevada Supreme Court's decision in *Comstock Residents Association v. Lyon County Board of Commissioners*, 134 Nev. Adv. Op. 19, 414 P.3d 318 (2018), please advise all employees/officials subject to this request to search their own personal files, emails, text messages, accounts, and devices for responsive materials to this request. The Nevada Supreme Court's decision makes clear that agency records are accessible to the public even if they are maintained in a non-governmental (personal) email account or in some other nonofficial location.

I look forward to receiving a reply from the State of Nevada in accordance with the timelines established in NRS Chapter 239. If the State of Nevada decides to withhold any of the requested records, or portions of any requested records, we request that you provide a detailed written explanation of your reasons for withholding the requested information.

Very truly yours,



Mark G. Simons, Esq.
Jeremy B. Clarke, Esq.

MGS/JBC/cb

EXHIBIT 2

EXHIBIT 2



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

July 22, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

Re: Public Records Request, dated July 13, 2020, received July 15, 2020.

Dear Mr. Simons and Mr. Clarke:

The State of Nevada Division of Environmental Protection ("NDEP") received your public records request on behalf of Mr. Robert Matthews, dated July 13, 2020. This request seeks the release of certain records maintained by this office, specifically:

1. All communications, documents and electronically stored information of Danilo Dragoni discussing or relating to a Tahoe Western Asphalt's ("TWA") air quality permit.
2. All communications, documents and electronically stored information discussing or related to the April 1, 2020 Draft Notice of Alleged Air Quality Violations and Order Nos. 2783, 28784, 2785 and 2786.
3. All communications, documents and electronically stored information discussing or related to TWA's June 15, 2020 email request to Danilo Dragoni that the NDEP review a blue smoke kit.
4. All communications, documents and electronically stored information between NDEP personnel and personnel with the Carson City Planning Commission discussing or related to TWA.

5. All communications, documents and electronically stored information between NDEP personnel and any residents of Moundhouse, Nevada.
6. All communications, documents and electronically stored information between NDEP personnel and member of Carson City code enforcement staff.
7. All NDEP internal communications, documents and electronically stored information discussing or related to TWA from January 1, 2018 through the present.

In an effort to assist you with your requests, for the purposes of responding to Nos. 5 and 6, NDEP assumes that you are requesting: "All communications, documents and electronically stored information between NDEP personnel and any residents of Moundhouse, Nevada related to TWA from January 1, 2018 through the present" and "All communications, documents and electronically stored information between NDEP personnel and member of Carson City code enforcement staff related to TWA from January 1, 2018 through present", respectively.

Please advise us as soon as possible if the scope provided in the preceding paragraph is more restrictive than you intend. If the foregoing is more restrictive than you intend, please provide a range of dates and subject matters to assist us in obtaining a more succinct set of records that is most relevant to your inquiry.

The Division will conduct a review of records in our custody to determine if any responsive records exist. Due to the volume and nature of documents requested, this office will not be able to respond within 5 days of your request. Our office anticipates responding to this request by August 26, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Handy
State of Nevada
Office of the Attorney General



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

August 20, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

Re: Public Records Request, dated August 12, 2020, received August 14, 2020.

Dear Mr. Simons and Mr. Clarke:

The State of Nevada Division of Environmental Protection ("NDEP") received your public records request, dated August 12, 2020. This request seeks the release of certain records maintained by this office, specifically:

1. All communications, documents and electronically stored information of the NDEP discussing, referring to, or relating to Brunswick Canyon Materials ("Brunswick") located at 7400 Brunswick Canyon Road, Carson City, Nevada, 89701.
2. All communications, documents and electronically stored information discussing, referring to, or related to the Brunswick's asphalt plant.
3. All communications, documents and electronically stored information discussing, referring to, or related to Brunswick's "fire letter."

The Division will conduct a review of records in its custody to determine if any responsive records exist. Due to the volume and nature of documents requested, the office will not be able to respond within 5 days of your request. Our office anticipates responding to this request by September 28, 2020. If the records are not available by that time, the Division will

Simons Hall Johnson
Page 2
August 20, 2020

provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Handy
State of Nevada
Office of the Attorney General



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

August 26, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

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6. All communications, documents and electronically stored information between NDEP personnel and member of Carson City code enforcement staff.
7. All NDEP internal communications, documents and electronically stored information discussing or related to TWA from January 1, 2018 through the present.

In an effort to assist you with your requests, for the purposes of responding to Nos. 5 and 6, NDEP assumed that you were requesting: "All communications, documents and electronically stored information between NDEP personnel and any residents of Moundhouse, Nevada related to TWA from January 1, 2018 through the present" and "All communications, documents and electronically stored information between NDEP personnel and member of Carson City code enforcement staff related to TWA from January 1, 2018 through present", respectively.

No supplemental information was provided by you regarding the request or NDEP's assumptions.

The Division is still conducting retrieval and review of records in our custody to respond to your request. Due to the volume and nature of documents requested, this office has not been able to identify, review, and produce the documents requested by today's date. The Division is still awaiting receipt of cell phone SMS messages and hand-written notes from Division staff (most of whom have been working from home due to the ongoing pandemic) and Microsoft Teams activity and messages ordered from IT Services. Additionally, the Division will need some additional time to review the records once received.

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Simons Hall Johnston (TWA)
Page 3
August 26, 2020

Our office anticipates being able to fully respond to this request by September 25, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Hand
State of Nevada
Office of the Attorney General



STATE OF NEVADA

Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

September 25, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

Re: Public Records Request, dated July 13, 2020, received July 15, 2020

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7. All NDEP internal communications, documents and electronically stored information discussing or related to TWA from January 1, 2018 through the present.

In an effort to assist you with your requests, for the purposes of responding to Nos. 5 and 6, NDEP assumed that you were requesting: "All communications, documents and electronically stored information between NDEP personnel and any residents of Moundhouse, Nevada related to TWA from January 1, 2018 through the present" and "All communications, documents and electronically stored information between NDEP personnel and member of Carson City code enforcement staff related to TWA from January 1, 2018 through present", respectively.

No supplemental information was provided by you regarding the request or NDEP's assumptions.

The Division is still conducting retrieval and review of records in our custody to respond to your request. Due to the volume and nature of documents requested, this office has not been able to identify, review, and produce all of the documents requested by today's date. At this time, some of the requested documents are still being transmitted to the Attorney General's Office for review, compilation, and production. I am in the process of conducting a privilege review of many of the documents that have been transmitted thus far. An initial set of documents is expected to be sent to you next week by mail.

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Simons Hall Johnston (TWA)
Page 3
September 25, 2020

Our office anticipates being able to fully respond to this request by October 29, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Handy
State of Nevada
Office of the Attorney General



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

September 28, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

Re: Public Records Request, dated August 12, 2020, received August 14, 2020.

Dear Mr. Simons and Mr. Clarke:

The State of Nevada Division of Environmental Protection ("NDEP") received your public records request, dated August 12, 2020. This request seeks the release of certain records maintained by this office, specifically:

1. All communications, documents and electronically stored information of the NDEP discussing, referring to, or relating to Brunswick Canyon Materials ("Brunswick") located at 7400 Brunswick Canyon Road, Carson City, Nevada, 89701.
2. All communications, documents and electronically stored information discussing, referring to, or related to the Brunswick's asphalt plant.
3. All communications, documents and electronically stored information discussing, referring to, or related to Brunswick's "fire letter."

The Division is still conducting a retrieval and review of records in its custody to respond to your request. Due to the volume and nature of documents requested, this office has not been able to identify, review, and produce all of the documents requested by today's date. At this time some of the requested documents are still being transmitted to the Attorney General's

Simons Hall Johnson
Page 2
September 28, 2020

Office for review, compilation, and production. Our office anticipates being able to fully respond to this request by October 29, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Handy
State of Nevada
Office of the Attorney General



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

October 29, 2020

Via Electronic Mail

Simons Hall Johnston
6490 S. McCarran Blvd, Suite F-46
Reno, NV 89509
Phone: 775-785-0088
Fax: 775-785-0087
Email: MSimons@shjnevada.com
Email: JClarke@shjnevada.com

Re: Public Records Request, dated August 12, 2020, received August 14, 2020.

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2. All communications, documents and electronically stored information discussing, referring to, or related to the Brunswick's asphalt plant.
3. All communications, documents and electronically stored information discussing, referring to, or related to Brunswick's "fire letter."

The Division is still conducting review and compilation of records in its custody to respond to your request. Due to the volume and nature of documents requested, this office has not been able to review and produce all of the documents requested by today's date. At this time, some of the requested documents are still being reviewed and compiled by the Attorney

Simons Hall Johnson
Page 2
October 29, 2020

General's Office. Our office anticipates being able to fully respond to this request by November 30, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Sincerely,

/s/ Peter P. Handy
State of Nevada
Office of the Attorney General

EXHIBIT 3

EXHIBIT 3



STATE OF NEVADA
Division of Environmental Protection
901 S. Stewart St., Suite 401
Carson City, NV 89701

October 1, 2020

Via U.S. Mail

Mark G. Simons, Esq.
Jeremy B. Clarke, Esq.
SIMONS HALL JOHNSTON
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

Re: Public Records Request, dated July 13, 2020, received July 15, 2020

Dear Mr. Simons and Mr. Clarke:

The State of Nevada Division of Environmental Protection ("NDEP") received your public records request on behalf of Mr. Robert Matthews, dated July 13, 2020.

Please find enclosed with this letter a DVD containing the first set of materials for disclosure pursuant to your request, consisting of 5518 bates-stamped pages, numerous outlook e-mail files, and several other electronic files as maintained by NDEP. None of the materials contained therein have been redacted or withheld due to any assertion of privilege.

As explained in the most recent acknowledgment and extension letter, I am conducting a review of the documents that NDEP believes may be privileged or subject to appropriate redaction, which we anticipate being able to provide to you along with a privilege log on October 29, 2020. If the records are not available by that time, the Division will provide an explanation of the reason the records are not available and a date and time after which we believe the records will be provided.

Simons Hall Johnston
October 1, 2020
Page 2 of 2

If you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,

/s/ Peter P. Handy

PETER P. HANDY

Deputy Attorney General

Office of the Attorney General

T: (775) 684-1227

E: PHandy@ag.nv.gov

PPH:dw

Enclosure: DVD