

**EXHIBIT 2**

**EXHIBIT 2**



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources  
Steve Sisolak, Governor  
Bradley Love, Director  
Empowering the Future

August 14, 2020

Robert Matthews  
Owner  
Tahoe Western Asphalt, LLC  
P.O. Box 21645  
Carson City, NV 89721

**RE: Notice of Alleged Air Quality Violation and Order Nos. 2783, 2784, and 2786  
Class II Air Quality Operating Permit 1611-3748 (FIN A1969)**

Dear Mr. Mathews:

The Nevada Division of Environmental Protection (NDEP) alleges that Tahoe Western Asphalt, LLC (TWA) has violated one or more conditions of its Class II Air Quality Operating Permit No. AP1499-0504.03 (AQOP).

On April 16, 2020, NDEP held an enforcement conference with TWA to determine whether issuance of Notices of Alleged Air Quality Violation and Order (NOAV) Nos. 2783, 2784, and 2786 were or were not warranted. During the enforcement conference TWA did not supply evidence that NOAV Nos. 2783, 2784, and 2786 did not occur. Based on the information provided by TWA, NDEP has determined that formal issuance of NOAV Nos. 2783, 2784, and 2786 are warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, NOAV Nos. 2783, 2784, and 2786 constitutes major violations. For the purpose of determining the modifiers for the history of non-compliance, TWA's has been issued nine prior NOAVs within the last 60 months. Pursuant to NAC 445B.281, the alleged violations under NOAV No. 2784 are major violations due to the violations issued under NOAV No. 2602, on January 24, 2017, being a first, second, and third offense minor violations of NAC 445B.275.1.e in the previous 60 months.

NDEP makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The date for the next SEC hearing has not been determined. It is possible that the SEC hearing will be conducted by teleconference due to COVID. You will be notified when the time and location for the hearing has been finalized.

Appeals of NOAV & Orders Nos. 2783, 2784 and 2786 may be requested pursuant to **Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations** and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to **NRS 445B.340 Appeals to Commission: Notice of appeal**. A copy of SEC Appeal Form #3 is enclosed and can also be found on the SEC website at: <https://sec.nv.gov/participate/forms-and->

Tahoe Western Asphalt  
August 14, 2020  
Page 2 of 2

documents. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by email at [vkking@ndep.nv.gov](mailto:vkking@ndep.nv.gov). Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding this matter, please contact me at [ddragoni@ndep.nv.gov](mailto:ddragoni@ndep.nv.gov) (preferred) or at (775) 687-9340 (response may be delayed due to limited presence in the office because of the COVID-19 emergency).

Sincerely,



Danilo Dragoni  
Chief  
Bureau of Air Quality Planning

DD/ajt/dd

enc.: 1. Notices of Alleged Air Quality Violation and Order No. 2783, 2784, and 2786  
2. SEC Form #3

cc (w/enc.): Valerie King, SEC  
Carson City County Board of County Commissioners  
FIN A0739 (Certified Copy)

F-Copy: Greg Lovato, P.E. Administrator, NDEP  
Frederick "Rick" Perdomo, Esq., Deputy Administrator, NDEP  
Jeffrey Kinder, P.E., Deputy Administrator, NDEP  
Lisa Kremer, P.E., Chief, BAPC  
Andrew Tucker, Supervisor, Enforcement Branch, BAQP  
Iravis Osterhout, P.E., Supervisor, Compliance Branch, BAPC  
Tanya Soleta, P.E., Supervisor, Permitting Branch, BAPC  
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC  
David Dragon, Enforcement Staff, BAQP  
Jeremy B. Clarke, Esq., Simons Hall Johnston PC  
Peter P. Handy, Deputy Attorney General, Nevada Office of the Attorney General  
Rob Pyzel, Planner, Planning Department, Lyon County  
Lee Plemel, Community Development Director, Carson City

Certified Mail No.: 9171 9690 0935 0238 8352 97

NSEC 031

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STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR QUALITY PLANNING  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249  
**NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2783**

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**Person(s) to Whom Served:** Robert Matthews, Owner  
**Company Name:** Tahoe Western Asphalt, LLC  
**Address:** P.O. Box 21645, Carson City, NV 89721  
**Permit Number:** AP1611-3748 **FIN:** A1969  
**Site of Alleged Violation:** 8013 US 50 East, Carson City, Nevada 89701  
**Date of Observation:** March 23 & 24, 2020 **Time:** N/A

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

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

*1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit.*

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

Failure to maintain permit-required air pollution controls.

**Evidence:**

Tahoe Western Asphalt, LLC (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 March 23, 2020, NDEP staff conducted a full on-site inspection of the TWA facility. The plant was not operating when NDEP staff arrived on-site. Upon request of NDEP staff, the plant equipment was activated and aggregate was processed to demonstrate the equipment in operation. NDEP staff attempted to verify that the emission controls were present and operational. 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. NDEP staff noted that Mr. Matthews stated that the FWS had not been operating because they freeze in the cold weather. NDEP staff advised Mr. Matthews that the air pollution controls must be operating if the process equipment is operating.

On March 24, 2020, NDEP staff returned the facility to review facility records that were not on-site on the previous day. While on-site, NDEP staff observed that the plant was in operation, but the air pollution controls for System 1 still did not appear to be in operation.

On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss

*This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249*

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NOAV NO. 2783

alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. During the enforcement conference Mr. Clarke informed NDEP that TWA was not contesting the alleged violation for failure to maintain controls.

After the enforcement conference Mr. Clarke was allowed time to confer with his client before following up with additional information. In Mr. Clarke's follow-up response on May 1, 2020, there was also no indication that TWA was contesting the alleged violation.

Based on the information provided by TWA's legal counsel during the enforcement conference the NDEP has determined that issuance of NOAV No 2783 is warranted. In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation.

Signature \_\_\_\_\_

Issued by Danilo Dragoni, PhD  
Chief  
Bureau of Air Quality Planning

Phone: 775-687-9340 Date: August 14, 2020

DD/at

Certified Mail No.: 9171 9690 0935 0238 8352 97

*This NOAV and Order becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249*

NSEC 033

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STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION  
BUREAU OF AIR QUALITY PLANNING  
901 SOUTH STEWART ST., SUITE 4001  
CARSON CITY, NEVADA 89701-5249  
**NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2784**

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**Person(s) to Whom Served** Robert Matthews, Owner  
**Company Name.** Tahoe Western Asphalt, LLC  
**Address:** P.O. Box 21645, Carson City, NV 89721  
**Permit Number:** AP1611-3748 **FIN:** A1969  
**Site of Alleged Violation:** 8013 US 50 East, Carson City, Nevada 89701  
**Date of Observation:** March 23 & 24, 2020 **Time** N/A

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

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

*1. Failure to comply with any requirement of NAC 445B.001 to 445B 3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

*(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained an operating permit;*

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

Failure to conduct permit-required recordkeeping and monitoring

**Evidence:**

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

On March 23, 2020, NDEP staff conducted a full on-site inspection of the TWA facility. During the inspection, NDEP staff attempted to conduct a complete records review. At that time TWA was only able to provide records for the daily plant-wide production totals, operational dates, and total daily hours of operation for January 4, 2019, to November 23, 2019. Mr. Matthews, the owner of TWA, indicated that he had more records at home and offered to allow the NDEP staff to accompany him to his home to retrieve them, but the offer was declined. NDEP staff requested that Mr. Matthews bring the records to the facility the following day, at which point they would return to review the records at that time.

On March 24, 2020, NDEP staff reviewed the remaining records that TWA was able to produce. The provided records consisted of:

1. Logs of hours of operation and drum temperatures for System 2 (S2.001) from April 8, 2017 to November 25, 2019.
2. Records of that EPA Method 9 Visual Emission Observations (VEO) conducted on one day, August 12, 2018, for Systems 1, 3, 4, and 5 (PF1.001-PF1.012, and S2.002)
3. Records of twelve Method 9 VEOs for System 2 (S2.001).

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The permit requires TWA to maintain a contemporaneous log of each parameter identified in sections V.A.4, V.B.4, V.C.4, V.D.4, and V.E.4 of the AQOP. Based on the records provided during the inspection, TWA has not met the monitoring recordkeeping requirements for Systems 1 through 5.

On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. NDEP agreed to allow Mr. Clarke to confer with his client before responding to some questions from NDEP. During the conference Mr. Clarke indicated that some of TWA's records were allegedly stolen by a former employee and that TWA was trying to recover these records. The records that were allegedly stolen have not been produced and no evidence was provided to support the claim.

On May 1, 2020, Mr. Clarke emailed written commentary to NDEP with TWA's concerns regarding the alleged violations. TWA's contention of the alleged violations were based on the following additional points:

1. TWA asserted that their recordkeeping requirements were limited to hours of operation, throughput/tonnage and fuel usage and those records were provided.
2. TWA also asserted that EPA Method 9 VEOs cannot be conducted when making minimal tonnages of asphalt mix.
3. The VEOs could not be completed because TWA's EPA Method 9 VEO certification had expired.
4. TWA alleged that a portion of their records had been stolen.

On May 7, 2020, NDEP held a follow-up call with Mr. Clarke and to discuss the contentions that TWA identified. Additionally, the NDEP also provided additional feedback with regard to the recordkeeping deficiencies through a number of emails with TWA and their legal counsel. For the following reasons NDEP believes TWA's arguments fail to demonstrate that the alleged violations did not occur:

1. The records that were provided to NDEP staff for review during the inspection records did not include records for each permitted system as required by the AQOP.
2. The records TWA provided for inspection did not meet the hourly, monthly or annual requirements for material throughput, fuel usage, or hours of operation.
3. The records were substantially deficient in the requirements to monitor and record the weekly or monthly Method 9 VEOs required for each System. This requirement is not conditional on the facility having someone on staff that is certified to conduct Method 9 VEOs. TWA could have contracted a third party to conduct Method 9 VEOs if they did not have staff that were certified to conduct them.
4. A Method 9 VEO takes six minutes to conduct. TWA has not provided evidence to support the claim that VEOs could not be conducted due to limited operations of the plant.
5. Records of the daily observations of visible emission for System 2 were deficient.
6. There is a significant period of time since operations started at the facility in 2016 that TWA was unable to provide even partial records. The AQOP requires that records be maintained for five years.
7. No additional information was provided to corroborate TWA's claim that the records had been stolen.

Based on the information provided by TWA's legal counsel during and after the enforcement conference the NDEP has determined that issuance of NOAV No. 2784 is warranted. In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation. TWA's first, second, and third instance of a minor violation for NAC 445B 275 1.e were issued in NOAV No. 2602 on January 24, 2017.

Signature \_\_\_\_\_

Issued by: Danilo Dragoni, PhD  
Chief  
Bureau of Air Quality Planning

Phone: 775-687-9340 Date: August 14, 2020

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NOAV NO. 2784

DD/at

Certified Mail No.: 9171 9690 0935 0238 8352 97

*This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.*

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NSEC 036



STATE OF NEVADA  
 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
 DIVISION OF ENVIRONMENTAL PROTECTION  
 BUREAU OF AIR QUALITY PLANNING  
 901 SOUTH STEWART ST., SUITE 4001  
 CARSON CITY, NEVADA 89701-5249  
**NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2786**

Person(s) to Whom Served Robert Matthews, Owner  
 Company Name Tahoe Western Asphalt, LLC  
 Address: P.O. Box 21645, Carson City, NV 89721  
 Permit Number: AP1611-3748 FIN: A1969  
 Site of Alleged Violation 8013 US 50 East, Carson City, Nevada 89701  
 Date of Observation: March 23 & 24, 2020 Time N/A

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

**Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.**

1. Failure to comply with any requirement of NAC 445B 001 to 445B 3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit.

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

Failure to comply with permitted opacity limits

**Evidence:**

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

On March 23, 2020, NDEP staff investigated the complaints and observed opacity emitting from the stack for System 2 - Asphalt Plant Drum Dryer Mixer/Burner (S2.001) NDEP staff conducted four six-minute Method 9 Visual Emission Observations (VEO) on S2.001 between 8.50 am and 10 00 am. The average opacities for each of the Method 9 VEOs were 62.5%, 25%, 63.5%, and 53.5%. The AQOP and 40 CFR Part 60 92(a)(2) restrict opacity in excess of 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 the four tables below.

**Table 1: Method 9 Visible Emission Observations**

<b>Method 9 VEO #1 – Date: 3/23/2020 – Time: 8:53am - 8:59am</b>				
	<b>Seconds: 0</b>	<b>Seconds: 15</b>	<b>Seconds: 30</b>	<b>Seconds: 45</b>
<b>Minute: 1</b>	45%	45%	45%	45%
<b>Minute: 2</b>	50%	50%	60%	70%
<b>Minute: 3</b>	70%	70%	70%	75%
<b>Minute: 4</b>	70%	75%	70%	70%
<b>Minute: 5</b>	65%	65%	70%	60%
<b>Minute: 6</b>	60%	70%	70%	60%

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Table 24: Method 9 Visible Emission Observations (continued)

<b>Method 9 VEO #2 – Date: 3/23/2020 – Time: 8:59am - 9:05am</b>				
	<b>Seconds: 0</b>	<b>Seconds: 15</b>	<b>Seconds: 30</b>	<b>Seconds: 45</b>
<b>Minute: 1</b>	45%	50%	50%	50%
<b>Minute: 2</b>	45%	30%	25%	30%
<b>Minute: 3</b>	25%	25%	20%	20%
<b>Minute: 4</b>	20%	20%	15%	15%
<b>Minute: 5</b>	15%	15%	15%	15%
<b>Minute: 6</b>	15%	15%	10%	15%
<b>Method 9 VEO #3 – Date: 3/23/2020 – Time: 9:31am - 9:37am</b>				
	<b>Seconds: 0</b>	<b>Seconds: 15</b>	<b>Seconds: 30</b>	<b>Seconds: 45</b>
<b>Minute: 1</b>	75%	75%	70%	75%
<b>Minute: 2</b>	80%	80%	75%	70%
<b>Minute: 3</b>	70%	70%	75%	70%
<b>Minute: 4</b>	80%	90%	100%	90%
<b>Minute: 5</b>	80%	90%	40%	15%
<b>Minute: 6</b>	15%	10%	15%	15%
<b>Method 9 VEO #4 - 3/23/2020 - 9:41am - 9:47am</b>				
	<b>Seconds: 0</b>	<b>Seconds: 15</b>	<b>Seconds: 30</b>	<b>Seconds: 45</b>
<b>Minute: 1</b>	90%	90%	90%	95%
<b>Minute: 2</b>	90%	95%	95%	95%
<b>Minute: 3</b>	100%	85%	40%	40%
<b>Minute: 4</b>	40%	35%	35%	30%
<b>Minute: 5</b>	30%	25%	20%	15%
<b>Minute: 6</b>	15%	10%	10%	15%

On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. During the enforcement conference NDEP and TWA agreed to allow Mr. Clarke to confer with his client before responding to some questions from NDEP.

On May 1, 2020, Mr. Clarke emailed written commentary to NDEP with TWA's concerns regarding the alleged violations. TWA's contention of the alleged violation was based on the following three main points:

1. TWA was not operating continuously from 8:50 am to 10:00 am on March 23, 2020.
2. NDEP's staff did not have valid certifications to conduct EPA Method 9 VEOs at the time they were conducted
3. TWA asserted that EPA Method 9 VEOs are not valid if conducted under overcast conditions

On May 7, 2020, NDEP held a follow-up call with Mr. Clarke and to discuss the contentions that TWA identified. The NDEP responded to TWA's contentions as follows

1. The NDEP clarified that it was not asserting that the facility was operating continuously from 8:50 am and 10:00 am on March 23, 2020 but had just used the time range to give a general description of the timing of the event and specific times of the VEOs were given in Table 1.
2. The NDEP informed Mr. Clarke that both compliance officers that conducted the Method 9 VEOs had valid certifications to conduct EPA Method 9 VEOs at the time they were conducted.
3. NDEP informed Mr. Clarke that we were unaware of such a requirement and if he could provide documentation to support the assertion that partial cloud cover that was present at the time of the VEOs would invalidate the results. No documentation was ever provided by TWA to support their claim. NDEP staff also reviewed EPA's

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NOAV NO. 2786

documentation for requirements for conducting valid EPA Method 9 VEOs and found nothing indicating that partial cloud cover would invalidate the results

After taking into consideration the information provided by TWA's counsel, the NDEP has determined that issuance of NOAV No. 2786 for one event of failure to comply with the opacity is warranted for one event of exceeding the permitted opacity limit. In accordance with NAC 445B.281 Violations: Classification; administrative fines, the alleged violation constitutes a major violation

Signature \_\_\_\_\_

Issued by Danilo Dragghi, PhD  
Chief  
Bureau of Air Quality Planning

Phone 775-687-9340 Date August 14, 2020

DD/ajt

Certified Mail No : 9171 9690 0935 0238 8352 97

*This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249*

NSEC 039

**Form #3**  
**Request an Appeal Hearing**  
Revised 6-2012



NEVADA  
**STATE ENVIRONMENTAL  
COMMISSION**

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

Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Representative capacity (if applicable): \_\_\_\_\_

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

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

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

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

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

Date of Request: \_\_\_\_\_

#### Supporting Documents



After signing and submitting this form (below), attach the permit or notice of alleged violation that you are appealing directly to your email message. Include other supporting documents as needed.

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