

EXHIBIT 3

EXHIBIT 3

REC'D & FILED

2021 AUG 19 AM 10:26

AUGREY ROWLATT
CLERK

BY Handwritten Signature
OFFICE

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

TAHOE WESTERN ASPHALT, LLC,

Case No.: 20 OC 00004 1B

Dept. No.: I

Petitioner,

vs.

NEVADA STATE ENVIRONMENTAL
COMMISSION, an administrative
agency/department/division of the State of
Nevada; STATE OF NEVADA
DEPARTMENT OF CONSERVATION &
NATURAL RESOURCES, an
administrative department of the State of
Nevada; STATE OF NEVADA DIVISION
OF ENVIRONMENTAL PROTECTION,
an administrative division of the State of
Nevada Department of Conservation &
Natural Resources,

Respondents.

ORDER REMANDING FINAL ADMINISTRATIVE DECISION

This matter stems from the Parties' dispute involving three Notice of Alleged Violation ("NOAV") orders, which were issued by the Nevada State Environmental Commission ("NSEC"). Following a series of meetings and discussions, the Parties met on December 09, 2020 to further discuss the NOAVs. On that same day, the NSEC issued a Final Decision, which upheld the penalties for two of three NOAVs issued against Petitioner and substantially reduced the penalty for the third NOAV. Following the NSEC's final decision, Petitioner timely filed a Petition for Judicial Review on January 11, 2021.

1 This Court reviews administrative decisions for clear error or an arbitrary abuse of
2 discretion, while giving deference to the agency's findings. *Valenti v. State DMV*, 131 Nev.
3 875, 362 P.3d 83, 85 (2015); *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479,
4 482 (2013). This Court will only overturn those findings that are not supported by "substantial
5 evidence;" which is evidence that a reasonable person would find sufficient to support the
6 agency's conclusion. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Judicial review of an
7 agency's final decision is "confined to the record," and the court "shall not substitute its
8 judgment for that of the agency as to the weight of evidence on a question of fact." NRS
9 233B.135.


10 As an initial matter, this Court does not address the validity of the penalties and
11 imposed and makes no findings on the merits of this dispute. Pursuant to NRS 233B.125, a
12 final administrative decision must be supported by findings of fact and conclusions of law,
13 which are to be separately stated. NRS 233B.125. Absent detailed findings of fact or
14 conclusions of law, the Court cannot appropriately review the merits of an administrative
15 agency's decision. *See Poremba v. S. Nev. Paving*, 133 Nev. 12, 19-20, 388 P.3d 232, 238
16 (2017) (finding that the matter should be remanded to the agency for a new hearing and
17 determination); *see Nev. State Bd. Of Architecture v. Eighth Judicial Dist. Ct.*, 449 P.3d 1262,
18 1265 (2019) (finding that "the record lacked the requisite findings of fact and conclusions of
19 law to constitute a final decision pursuant to NRS 233B.125"); *see also Dickinson v. Am. Med.*
20 *Response*, 124 Nev. 460, 469, 186 P.3d 878, 884 (2008) (finding that the appeals officer failed
21 to provide a sufficient legal and factual explanation for her decision, frustrating judicial
22 review).

23 Here, under Nevada's vast precedent underlying chapter 233B, an administrative body
24 commits clear error when findings of fact and conclusions of law are not provided concurrent
25 with its final decision. The NSEC's Final Decision imposing more than Fifty Thousand Dollars
26 (\$50,000) in total fines does not provide any findings of fact or conclusions of law and fails to
27 conform to the requirements of NRS 233B.125. Although discussion between the Parties
28 undoubtedly occurred on December 09, 2020, the Court will not speculate as to the substance
of such discussions, nor will it attempt to infer the basis of the NSEC's determination.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOW, THEREFORE, IT IS HEREBY ORDERED that the matter is **REMANDED**
for further review, and for a final decision to be made setting forth findings of facts and
conclusions of law pursuant to NRS 233B.125.

DATED this 19th day of August, 2021.


JAMES T. RUSSELL
DISTRICT JUDGE

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 19 day of August, 2021, I deposited for mailing at Carson City, Nevada,
4 a true and correct copy of the foregoing Order addressed as follows:
5

6 Thomas M. Padian, Esq.
7 LANAK & HANNA, P.C.
8 625 The City Drive South, Suite 190
9 Orange, CA 92868

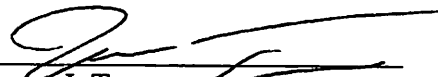
10 David R. Johnson, Esq.
11 LAW OFFICES OF DAVID R. JOHNSON, PLLC
12 8712 Spanish Ridge Avenue
13 Las Vegas, NV 89148

14 Nevada State Environmental Commission
15 901 S Stewart Street, Suite 4001
16 Carson City, NV 89701-5249

17 State of Nevada Department of Conservation & Natural Resources
18 901 S Stewart Street, Suite 1003
19 Carson City, NV 89701-5249

20 State of Nevada Division of Environmental Protection
21 901 S Stewart Street, Suite 4001
22 Carson City, NV 89701-5249

23 Aaron Ford
24 Attorney General of Nevada
25 100 N Carson Street
26 Carson City, NV 89701-4717

27
28

Jackson J. Tann
Law Clerk, Dept. 1