

1 **BEFORE THE STATE OF NEVADA,**
2 **STATE ENVIRONMENTAL COMMISSION**

3 In Re:

**NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION'S
BRIEF**

4 Remand of Penalty to
5 TAHOE WESTERN ASPHALT, LLC
6 for Alleged Air Quality Violation and
7 Order Nos. 2783, 2784, and 2786

8 Class II Air Quality Operating
9 Permit 1611-3748 (FIN A1969)

10 The Nevada Division of Environmental Protection (“NDEP”), by and through legal
11 counsel, Nevada Attorney General Aaron D. Ford and Senior Deputy Attorney General
12 Daniel P. Nubel, hereby files its Brief requesting that the State Environmental
13 Commission (“SEC”) adopt its proposed Findings of Fact, Conclusions of Law, and
14 Decision (attached as Exhibit 1). This Brief is based on the attached Memorandum of
15 Points and Authorities and all pleadings on file, the exhibits attached hereto, as well as
16 all oral arguments the SEC will hear on this matter.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 The purpose of this hearing is to correct a minor procedural defect relating to the
20 SEC’s recently issued penalties against Tahoe Western Asphalt (“TWA”). On December 9,
21 2020, the SEC assessed penalties against TWA relating to several air quality permit
22 violations. The total penalty amount was set at \$50,020. TWA appealed the SEC’s final
23 decision on the basis that it failed to contain a formal findings of fact and conclusions of
24 law, as required under NRS 233B.125. The court agreed that the SEC’s decision was
25 missing the required findings of fact and conclusions of law, and so it remanded the case
26 back to the SEC for one to be issued. Notably, the court’s decision was related only to this
27 procedural defect. It did not address the validity of the penalties, nor did it make findings
28 on the merits of the dispute.

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1 The SEC has already reached its final decision on this matter, and the remand
2 hearing in this case should be limited to articulating the SEC's reasoning into a formal
3 findings of fact and conclusions of law. As such, NDEP attaches to this Brief a proposed
4 Findings of Fact, Conclusions of Law, and Decision which it believes expresses the SEC's
5 rationale for its decision based on the contents of the hearing that took place. A copy of
6 NDEP's proposed Findings of Fact, Conclusions of Law, and Decision is attached as
7 Exhibit 1. This document would cure the procedural defect outlined in the court's order
8 remanding this case.

9 For these reasons, NDEP requests that the SEC adopt its Findings of Fact,
10 Conclusions of Law, and Decision.

11 **II. RELEVANT FACTS**

12 This matter arises from TWA's violation of multiple conditions of its Class II Air
13 Quality Operating Permit No. 1611-3748. On August 14, 2020, NDEP issued Notices of
14 Alleged Air Quality Violation and Orders ("NOAV") Nos. 2783, 2784, and 2786 relating to
15 these three major violations. A copy of NDEP's August 14, 2020, Letter is attached as
16 Exhibit 2. These violations included TWA's (1) failure to maintain permit-required
17 air pollution controls (NOAV 2783); (2) failure to conduct permit-required recordkeeping
18 and monitoring (NOAV 2784); and (3) failure to comply with permitted opacity limits
19 (NOAV 2786). *Id.* TWA did not appeal the NOAVs.

20 The SEC held a meeting on December 9, 2020, where it considered the appropriate
21 penalties for the NOAVs issued against TWA. The SEC levied an administrative fine in
22 the amount of \$870 for NOAV 2783. The SEC also levied an administrative fine in the
23 amount of \$10,000 for NOAV 2786. After discussion, the SEC decided to reduce the
24 recommended fine amount of \$117,450 for NOAV 2784, and instead levied an
25 administrative fine of \$39,150. Although the SEC issued a final decision regarding these
26 NOAVs, it did not issue a formal findings of fact and conclusions of law as contemplated
27 in NRS 233B.125.

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1 TWA appealed the SEC’s final decision to the First Judicial District Court, alleging
2 that the SEC’s final decision failed to conform to the requirement within NRS 233B.125
3 that a final decision “must include findings of fact and conclusions of law.” The court
4 found that the SEC was required to issue a findings of fact and conclusions of law under
5 NRS 233B.125, and therefore remanded the case back to the SEC to comply with that
6 statute. A copy of the Order Remanding Final Administrative Decision is attached as
7 Exhibit 3. The court made no findings regarding the validity of the penalties or the merits
8 of the dispute. *Id.* at 2:10–11. Instead, the court’s decision was limited to the procedural
9 defect.

10 **III. LEGAL ANALYSIS**

11 NRS 233B.125 states that “a final decision must include findings of fact and
12 conclusions of law, separately stated.” Findings of fact “must be accompanied by a concise
13 and explicit statement of the underlying facts supporting the findings.” *Id.* “The purpose
14 of this statute is to provide minimum due process, and findings must be prepared with
15 sufficient detail to permit judicial review.” *Hudler v. Anderson*, 125 Nev. 1045, 281 P.3d
16 1183 (2009).

17 The remand here is to simply remedy the procedural defect that was contained
18 within the SEC’s final decision. Based on its knowledge of the facts of this case, as well as
19 its observance of the December 9, 2020, hearing in which the SEC assessed the
20 underlying penalties against TWA, NDEP hereby submits a proposed Findings of Fact,
21 Conclusions of Law, and Decision that it believes captures the SEC’s reasoning for its
22 decision. This proposed order is attached as Exhibit 1. Entry of this proposed order would
23 fulfill the requirements set forth in NRS 233B.125.

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1 **IV. CONCLUSION**

2 For these reasons, NDEP requests that the SEC adopt its proposed Findings of
3 Fact, Conclusions of Law, and Decision, thereby fulfilling the court's purpose in
4 remanding the case.

5 DATED this 17th day of November, 2021.

6 AARON D. FORD
7 Attorney General

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 17th day of November, 2021, I served a true and correct copy of
4 the foregoing NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S BRIEF, by
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INDEX OF EXHIBITS

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2.	NDEP's August 14, 2020, Letter	12
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