

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

3 In Re:

DECISION NO. \_\_\_\_\_

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)

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

10 This matter came on for hearing before the State Environmental Commission<sup>1</sup>  
11 (“SEC”) on December 9, 2020, pursuant to NRS 445B.640 and NAC 445B.281(1), for  
12 levy of administrative fines, based upon Final Notices of Alleged Violations (“NOAV”)  
13 2783, 2784, and 2786, issued by the Division of Environmental Protection (the “Division”)  
14 against Tahoe Western Asphalt, LLC (“TWA”).

15 The Division was represented by Bureau Chief Danilo Dragoni, Ph.D., and  
16 Andrew Tucker. Jeremy Clarke, Esq., was present on behalf of TWA. There were no  
17 objections to any exhibits offered.

18 **STATEMENT OF THE CASE**

19 In the past five years, the Division has issued TWA several notices of alleged air  
20 quality violations and this Commission has imposed several penalties pursuant to those  
21 notices. Most recently, the Division issued Notices of Alleged Air Quality Violation and  
22 Order Nos. 2783, 2784, and 2786. These violations included failure to maintain permit-  
23 required air pollution controls, failure to conduct permit-required recordkeeping and  
24 monitoring, and failure to comply with permitted opacity limits. These constitute “major  
25 violations” under NAC 445B.281.

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27 <sup>1</sup> The Committee members present representing a quorum were: Chairperson Porta, Commission  
28 members Jason King, Kacey KC, Kathryn Landreth, Adam Sullivan, Mike Visher, Mark Turner, and  
Tony Wasley. Counsel for the SEC, Deputy Attorney General Henna Rasul, SEC Executive Secretary  
Valerie King, and TWA Owner Robert Matthews, were also present.

1 NOAVs 2783, 2784, and 2786 were based substantially on the following facts, as  
2 provided by the Division:

3 On or about March 18, 2020, through March 23, 2020, the Division's staff received  
4 multiple complaints about odor and smoke emanating from the TWA facility located in  
5 Carson City, Nevada. On March 23 and 24, 2020, the Division conducted inspections of  
6 TWA's facility located in Carson City, Nevada, including a review of TWA's records. On  
7 March 23, 2020, Division staff conducted several Method 9 visual emissions observations  
8 of the Facility. The visual emissions observations evidenced that the emissions from the  
9 Facility exceeded State and Federal regulatory limits for opacity. The TWA facility was  
10 not actively operating at the time Division staff arrived at the facility for the inspection.  
11 Facility equipment was activated, and aggregate was processed to demonstrate the  
12 equipment in operation. During the inspections of the Facility, the Division observed and  
13 identified: (1) emissions units PF1.001 through PF1.005 were in operation, but the  
14 fogging water systems were not in operation as required by the Permit; (2) a shaker  
15 screen, which was not permitted under the Permit; (3) three unpermitted material  
16 transfer points; and (4) fugitive dust was emanating from the Facility. During the  
17 inspections of the Facility, Division staff attempted to conduct a complete review of all  
18 records required by the Permit from start of operation on July 9, 2016. Robert Matthews,  
19 the Responsible Official under NAC 445B.156, only provided the total daily production,  
20 date, and total daily hours of operation for January 4, 2019, to November 23, 2019.  
21 Division staff requested that Mr. Matthews produce the missing records the following  
22 day, which included those required by Permit Section V.A.4 (total daily throughput, total  
23 daily hours of operation, average hourly throughput rate, monthly throughput, annual  
24 throughput, monthly hours of operation, annual hours of operation, and monthly  
25 Method 9 visible emissions observation), Section V.B.4 (total daily throughput recorded  
26 by a data logger, total daily propane consumption, total daily hours of operation recorded  
27 by a data logger, outlet temperature of the stack recorded by a data logger, average  
28 hourly throughput rate, average hourly propane consumption, monthly throughput,

1 annual throughput, monthly propane consumption, annual propane consumption,  
2 monthly hours of operation, annual hours of operation, daily observation of visible  
3 emissions, baghouse inspection and maintenance records per manufacture's  
4 recommendations, weekly Method 9 visible emissions observation, and the occurrence  
5 and duration of any startup, shut down or malfunction), Section V.C.4 (total daily  
6 throughput, total daily hours of operation, average hourly throughput rate, monthly  
7 throughput, annual throughput, monthly hours of operation, annual hours of operation,  
8 and monthly Method 9 visible emissions observation), Section V.D.4 (total daily loading of  
9 lime, total daily unloading of lime, total daily hours of operation, average hourly lime  
10 loading rate, average hourly lime unloading rate, monthly hours of operation, annual  
11 hours of operation, monthly lime loading rate, annual lime loading rate, monthly lime  
12 unloading rate, annual lime unloading rate, and monthly Method 9 visible emissions  
13 observation), and Section V.E.4 (total daily throughput, total daily hours of operation,  
14 average hourly throughput rate, monthly throughput, annual throughput rate, monthly  
15 hours of operation, annual hours of operation, and monthly Method 9 visible emissions  
16 observation).

17 On March 24, 2020, Division staff returned to the Facility. Despite this additional  
18 time, Mr. Matthews could not provide any records dated after November 25, 2019. On  
19 August 14, 2020, the Division issued three (3) NOAVs, Nos. 2783, 2784, and 2786, to  
20 TWA. NOAV 2783 alleged that Defendants failed to operate a fogging water spray system  
21 for PF1.002 when the facility was in operation. NOAV 2784 alleged that TWA failed to  
22 conduct recordkeeping and monitoring as required by the Air Quality Operating Permit  
23 ("AQOP"). NOAV 2786 alleged that TWA failed to comply with permitted opacity  
24 limits as evidence by the visual inspections conducted by Division staff on  
25 March 23, 2020.

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1 NDEP recommended fines utilizing the previously approved penalty matrix for:  
2 NOAV 2783 in the amount of \$870, NOAV 2784 in the amount of \$117,450,<sup>2</sup> and  
3 NOAV 2786 in the amount of \$10,000.

4 TWA contended that its due process rights would be violated by the issuance of  
5 fines, that the amount of time utilized by NDEP and the multiplier used to calculate the  
6 penalty for NOAV 2784 were arbitrary, and suggested a lower total fine for NOAV 2784  
7 of \$39,150. TWA did not dispute the amount of the fines proposed by NDEP for  
8 NOAVs 2783 or 2786.

9 Member Landryth made a motion to impose an adjusted penalty for NOAV 2784 in  
10 the amount of \$39,150. Member King seconded the motion. The motion carried  
11 unanimously.

12 Member Landryth made a motion to impose penalties for NOAV 2783 in the  
13 amount of \$870 and for NOAV 2786 of \$10,000. Member Visher seconded the motion. The  
14 motion carried unanimously.

### 15 FINDINGS OF FACT

16 Based upon the testimony introduced, the arguments of the parties, the evidence,  
17 and documents on file in this matter, the SEC makes the following findings of fact. All  
18 findings made are based upon substantial evidence.

- 19 1. At all times relevant, TWA held a Class II Air Quality Operating Permit.
- 20 2. NDEP properly issued final NOAVs 2783, 2784, and 2786 against TWA.
- 21 3. NOAVs 2783, 2784, and 2786 were not appealed by TWA within ten (10)  
22 days of their issuance or receipt, becoming final thereafter.
- 23 4. TWA has had nine (9) sustained Air Pollution Control Law violations within  
24 the previous 60 months of the issuance of NOAVs 2783, 2784, and 2786. At least three of  
25 those were violations of NAC 445B.275(1).

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28 <sup>2</sup> This calculation was based on a deviation requiring a fine to be calculated on a daily basis to a  
monthly basis.

1 5. TWA did not dispute the calculations in the previously approved penalty  
2 matrix or the resulting fine amounts proposed for NOAVs 2783 and 2786.

3 **CONCLUSIONS OF LAW**

4 1. TWA violated NAC 445B.275(1)(c) and NAC 445B.275(1)(e) during the  
5 periods and in the manners described in NOAVs 2783, 2784, and 2786.

6 2. Pursuant to NRS 445B.640, "any person who violates any provision of  
7 NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, or any  
8 regulation in force pursuant thereto . . . is guilty of a civil offense and shall pay an  
9 administrative fine levied by the Commission of not more than \$10,000 per day per  
10 offense." TWA's violations as described in NOAVs 2783, 2784, and 2786 therefore warrant  
11 imposition of an administrative fine.

12 3. Pursuant to NAC 445B.281(1), "Except as otherwise provided[,] any violation  
13 of the provisions of [NAC 445B.001 to 445B.390, inclusive,] is classified as a major  
14 violation, and a fine of up to \$10,000 per day per violation may be levied." Pursuant to  
15 NAC 445B.281(4), "All minor violations become major violations upon the occurrence of  
16 the fourth violation of the same section within a period of 60 consecutive months."

17 4. TWA had three or more violations of NAC 445B.275(1) within the previous  
18 60 months, causing the violations described in NOAVs 2783, 2784, and 2786 to  
19 necessarily be major violations for the purposes of calculating an administrative fine.

20 5. The administrative fines proposed by NDEP for NOAVs 2783 and 2786 in  
21 the amounts of \$870 and \$10,000, respectively, are reasonable and warranted and are  
22 approved by the Commission.

23 6. The administrative fine proposed by NDEP for NOAV 2784 is too high, the  
24 calculation should be made at \$600 per day, times 45 months, times one system (instead  
25 of three) with a 45% adjustment factor for previous violations, resulting in a fine of  
26 \$39,150. The resulting fine of \$39,150 is reasonable and warranted and is approved by  
27 the Commission.

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