

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABC RECYCLING INDUSTRIES, LLC

Petitioner

vs.

STATE ENVIRONMENTAL
COMMISSION, a political subdivision of
the State of Nevada; NEVADA
DIVISION OF ENVIRONMENTAL
PROTECTION, a political subdivision of
the State of Nevada, and DOES I through
X and ROE CORPORATIONS XX
through XXX

Respondents/Cross-Petitioner

Electronically Filed
Dec 15 2021 11:18 p.m.
Case No. 83027 Elizabeth A. Brown
Clerk of Supreme Court
District Court Case No. A-20-
818624-J

APPEAL

From the Eighth Judicial District Court
Department I
Clark County Nevada
HONORABLE BITA YEAGER

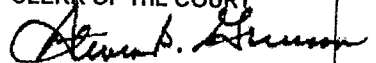
APPELLANT'S APPENDIX VOL I

LAW OFFICES OF BYRON THOMAS
BYRON THOMAS, ESQ.
BAR NO: 8906
Attorney for
ABC RECYCLING INDUSTRIES, LLC

	Filing Date	Page Numbers	Volume
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Order Approving Extension to File Reply	04/09/2021	APP0254- APP0259	2
Order Denying Petition for Judicial Review	4/26/2021	APP0279- APP0281	2
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Stipulation to Extend Time to File Memorandum	12/7/2020	APP0195- APP0202	2

Stipulation to Extend Time to File Memorandum (Second Request)	12/16/2020	APPo203- APPo206	2
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CASE NO: A-20-818624-J
Department 19

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Nevada Bar No. 8906
3275 S. Jones Blvd. Ste. 104
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Phone: 702 747-3103
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Byronthomaslaw@gmail.com
Attorney for ABC Recycling Industries LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

ABC RECYCLING INDUSTRIES, LLC)	Case No.:
)	
Petitioner,)	Dept. No:
vs.)	
)	
STATE ENVIRONMENTAL COMMISSION)	
political subdivision of the State of Nevada;)	
NEVADA DIVISION OF)	
ENVIRONMENTAL PROTECTION a)	
political subdivision of the State of Nevada)	
and DOES I through X and ROE)	
CORPORATIONS XX through XXX,)	
<hr/>		
Respondents.		

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioner, ABC Recycling Industries, LLC , domiciled in Clark County, Nevada, appearing in the above-entitled action, and hereby petitions this Court for judicial review of the Decision and Order of the State Environmental Commission and Nevada Division of Environmental Protection (the "Commission") dated June 26, 2020 , a copy of which is attached hereto as Exhibit 1.

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///

1 This Petition for Judicial Review is filed pursuant to ,NRS233B.130 which provides for judicial
2 review of contested cases

3 Petitioner alleges that the Commission exceeded its statutory authority, was clearly
4 erroneous in view of the reliable, probative and substantial evidence on the whole of the record;
5 and was, arbitrary, capricious, characterized by abuse of discretion and erroneously interpreted a
6 statute and rule of civil procedure..

7
8 Petitioner files this Petition pursuant to NRS 233B

9
10 LAW OFFICES OF BYRON THOMAS

11
12 /s/ Byron E. Thomas

13 _____
14 BYRON E. THOMAS, ESQ.
15 Nevada Bar No. 8906
16 3275 S. Jones Blvd. Ste. 104
17 Las Vegas, Nevada 89146
18 Phone: 702 747-3103
19 Facsimile: (702) 543-4855
20 Byronthomaslaw@gmail.com
21 Attorney for ABC Recycling Industries, LLC
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EXHIBIT 1

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BEFORE THE STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION

In the Matter of:

ABC RECYCLING LLC'S APPEAL OF
NDEP'S FEBRUARY 6, 2020 DECISION
TO REVOKE THE LATHROP MILL
RECLAMATION PERMIT #0171; AND
FORFEIT OF THE RECLAMATION
SURETY CASH DEPOSIT

ORDER GRANTING THE
NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION'S MOTION FOR
SUMMARY JUDGMENT

On February 15, 2020, ABC Recycling Industries, LLC ("ABC") filed its appeal of the Nevada Division of Environmental Protection's ("NDEP") February 6, 2020, decision to revoke the Lathrop Mill Reclamation Permit #0171 and forfeit of the reclamation surety cash deposit. ABC's grounds of appeal stated that the "final decision was affected by other error of law."

On March 11, 2020, NDEP submitted a Motion for Summary Judgment (the "Motion"). ABC submitted its Opposition to NDEP's Motion on April 24, 2020. NDEP submitted its Reply in Support of its Motion on May 15, 2020. Utilizing its powers under NAC 445B.8913, the State Environmental Commission ("SEC") set a prehearing conference date of June 12, 2020, to rule on NDEP's Motion.

SUMMARY OF HEARING

On June 12, 2020, a three member panel of the SEC convened to rule on NDEP's Motion for Summary Judgment. The SEC Panel consisted of Chairman James Gans and Commissioners Tom Porta and Kacey KC. The three member panel constituted a quorum of that body. The SEC Panel was represented by Senior Deputy Attorney General Henna Rasul.

Appellant, ABC Recycling Industries, LLC, was present and represented by Byron Thomas, Esq. of Law Offices of Byron Thomas, and Appellee, NDEP, was present and

1 represented by counsel, Deputy Attorney General Daniel Nubel of the State of Nevada,
2 Office of the Attorney General.

3 The prehearing conference proceeded in due course. ABC and NDEP provided
4 opening statements. Once opening statements had concluded, the SEC Panel asked both
5 parties to answer questions relating to the Motion. The Panel then deliberated on the
6 legal and factual issues raised during the prehearing conference. The Panel found that no
7 genuine issue of material fact existed in this case because both parties agreed that ABC
8 had failed to pay its required annual fee of \$4,166 by April 15, 2019. NDEP gave ABC
9 several opportunities to come into compliance, but ABC admitted that it never availed
10 itself of those opportunities. Under NRS 519.260 and NAC 519A.235, ABC was legally
11 required to pay its annual fee by April 15, 2019. Given the uncontested fact that ABC
12 failed to pay its legally required fee by April 15, 2019, NDEP justifiably utilized its
13 powers under NRS 519A.150(9) to revoke ABC's Permit. Further, NDEP properly
14 forfeited ABC's reclamation surety cash deposit pursuant to NAC 519A.390.

15 During the deliberation, Commissioner KC made a motion to grant NDEP's Motion
16 for Summary Judgment, and thereby enter judgment affirming NDEP's decision to revoke
17 ABC's Permit and forfeit ABC's reclamation surety cash deposit. Commissioner Porta
18 seconded the motion and it passed by unanimous vote of the Panel.

19 CONCLUSION

20 The State Environmental Commission hereby grants the Nevada Division of
21 Environmental Protection's Motion for Summary Judgment. As such, the State
22 Environmental Commission affirms the Nevada Division of Environmental Protection's
23 decision to revoke ABC Recycling LLC's Reclamation Permit #0171 and forfeit of the
24 reclamation surety cash deposit.

25 DATED this 25th day of June, 2020.

26
27 By: J-PA
28 Member
State Environmental Commission

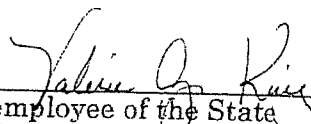
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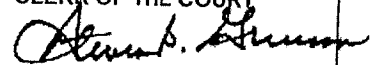
CERTIFICATE OF SERVICE

I, Valerie King, certify that I am an employee of the State of Nevada, State Environmental Commission, and do hereby certify on this 26th day of June, 2020, I electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and correct copy of the foregoing document, postage prepaid, to the following:

Daniel Nubel
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1225
Email: daniel.nubel@nvcap.nv.gov
Attorney for NDEP

Byron Thomas, Esq.
Law Offices of Byron Thomas
3275 S Jones Blvd
Las Vegas, NV 89146
(702) 747-3103
Email: byronthomaslaw@gmail.com
Attorney for ABC


An employee of the State
Environmental Commission



CASE NO: A-20-818624-J
Department 19

LAW OFFICES OF BYRON THOMAS
BYRON E. THOMAS, ESQ.
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Las Vegas, Nevada 89146
Phone: 702 747-3103
Facsimile: (702) 543-4855
Byronthomaslaw@gmail.com
Attorney for ABC Recycling Industries LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

ABC RECYCLING INDUSTRIES, LLC)	Case No.:
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6 statute and rule of civil procedure..

7
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9
10 LAW OFFICES OF BYRON THOMAS

11
12 /s/ Byron E. Thomas

13 BYRON E. THOMAS, ESQ.
14 Nevada Bar No. 8906
15 3275 S. Jones Blvd. Ste. 104
16 Las Vegas, Nevada 89146
17 Phone: 702 747-3103
18 Facsimile: (702) 543-4855
19 Byronthomaslaw@gmail.com
20 Attorney for ABC Recycling Industries, LLC
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EXHIBIT 1

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2 Office of the Attorney General.

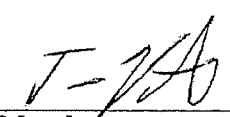
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22 Environmental Commission affirms the Nevada Division of Environmental Protection's
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25 DATED this 25th day of June, 2020.

26
27 By: 
28 Member
State Environmental Commission

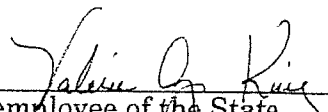
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CERTIFICATE OF SERVICE

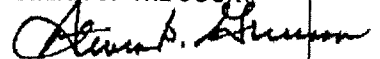
I, Valerie King, certify that I am an employee of the State of Nevada, State Environmental Commission, and do hereby certify on this 26th day of June, 2020, I electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and correct copy of the foregoing document, postage prepaid, to the following:

Daniel Nubel
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1225
Email: dnubel@ag.nv.gov
Attorney for NDEP

Byron Thomas, Esq.
Law Offices of Byron Thomas
3275 S Jones Blvd
Las Vegas, NV 89146
(702) 747-3103
Email: byronthomaslaw@gmail.com
Attorney for ABC



An employee of the State
Environmental Commission



1 SIPP
2 AARON D. FORD
3 Attorney General
4 DANIEL P. NUBEL (Bar No. 13553)
5 Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 100 North Carson Street
9 Carson City, Nevada 89701-4717
10 T: (775) 684-1225
11 E: dnubel@ag.nv.gov
12 *Attorney for Respondent,*
13 *Nevada Division of Environmental Protection*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 ABC RECYCLING INDUSTRIES, LLC,

Case No. A-20-818624-J

12 Petitioner,

Dept. No. 19

13 vs.

14 STATE ENVIRONMENTAL
15 COMMISSION, a political subdivision of
16 the State of Nevada; NEVADA DIVISION
17 OF ENVIRONMENTAL PROTECTION,
18 a political subdivision of the State of
19 Nevada, and DOES I through X and ROE
20 CORPORATIONS XX through XXX,

21 Respondents.

22 STATEMENT OF INTENT TO PARTICIPATE IN JUDICIAL REVIEW

23 Respondent, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION, through
24 its attorneys AARON D. FORD, Attorney General, and DANIEL P. NUBEL, Deputy
25 Attorney General, hereby files its Statement of Intent to Participate in Judicial Review,
26 pursuant to NRS 233B.130(3).

27 Respondent denies the allegations of error as set forth in the petition.

28 WHEREFORE, Respondent, NEVADA DIVISION OF ENVIRONMENTAL
PROTECTION, prays the court to affirm the decision of the STATE ENVIRONMENTAL
COMMISSION and for such other and further relief as the court may deem just and proper.

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DATED this 23rd day of September, 2020.

By: /s/ Daniel P. Nubel
DANIEL P. NUBEL
Deputy Attorney General

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Byron E. Thomas, Esq.
LAW OFFICES OF BYRON THOMAS
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BYRON E. THOMAS, ESQ.
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3275 S. Jones Blvd. Ste. 104
Las Vegas, Nevada 89146
Phone: 702 747-3103
Facsimile: (702) 543-4855
Byronthomaslaw@gmail.com
Attorney for Petitioner

IN THE DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY

ABC RECYCLING INDUSTRIES,)
LTC,)
Case No. A-20-818624-J)
Dept. No. 19)
Petitioner,)
vs.)

STATE ENVIRONMENTAL)
COMMISSION, a political subdivision)
of the State of Nevada; NEVADA)
DIVISION OF ENVIRONMENTAL)
PROTECTION, a political subdivision)
of the State of Nevada, and DOES I)
through X and ROE CORPORATIONS)
XX through XXX, Respondents.

STIPULATION TO EXTEND THE TIME FOR ABC RECYCLING TO
FILE OPENING MEMORANDUM OF POINTS AND AUTHORITIES
(SECOND REQUEST)

COMES NOW, the Parties by and through their respective counsel of record

who stipulate as follows:

On October 22, 2020, Respondent transmitted the record on appeal. Pursuant to

NRS 233B.133(1) Petitioner's Memorandum of Points and Authorities was due on

December 1, 2020. The Parties stipulated to a 10 day extension making it due on

December 11, 2020. The Court approved the Stipulation on December 7, 2020.

The Parties now find that additional time is needed, because of counsel for

Petitioners continuing back problems, the Holidays and the ongoing Covid-19

pandemic. To ensure that any delay in recovery, or unforeseen Covid-19 event,

will not require an additional extension the Parties request a forty five day (45)

extension measured from December 11, 2020. The Parties have agreed that this

will be the last stipulation concerning the extension of the deadline to file

Petitioner's Memorandum of Points.

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This is this is the second request and this stipulation is not entered into for any dilatory or improper purpose. That the aforementioned reasons constitute good cause NRS 233B.133(6).

Dated this __11__th day of December 2020

LAW OFFICES OF BYRON
THOMAS

/s/ Byron E. Thomas, Esq.

Byron E. Thomas Esq.
Nevada Bar No. 8906
3275 S. Jones Blvd. #104
Las Vegas Nevada, 89146
Tel: 702 747-3103
Facsimile: (702) 543-4855
Attorney Appellant

OFFICE OF THE ATTORNEY
GENERAL

/s/ Daniel P. Nubel, Esq.

Daniel P. Nubel, Esq.
Nevada Bar No. 13553
100 North Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1225
E: dnubel@ag.nv.gov
Attorney for Respondents

IT IS SO ORDERED

Dated this ____ day of December 2020

Dated this 16th day of December, 2020



E9A 81F 1442 4591
DISTRICT COURT JUDGE
William D. Kephart
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

ABC Recycling Industries, LLC., CASE NO: A-20-818624-J

Petitioner(s)

DEPT. NO. Department 19

vs.

State Environmental
Commission, Respondent(s)**AUTOMATED CERTIFICATE OF SERVICE**

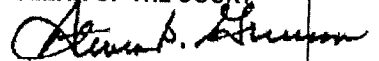
This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 12/16/2020

Dorene Wright dwright@ag.nv.gov

Daniel Nubel dnubel@ag.nv.gov

Byron Thomas byronthomaslaw@gmail.com



1 **ROA**
2 **AARON D. FORD**
3 **Attorney General**
4 **DANIEL P. NUBEL (Bar No. 13553)**
5 **Deputy Attorney General**
6 **State of Nevada**
7 **Office of the Attorney General**
8 **100 North Carson Street**
9 **Carson City, Nevada 89701-4717**
10 **T: (775) 684-1225**
11 **E: dnuvel@ag.nv.gov**
12 ***Attorney for Respondent NDEP***

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **ABC RECYCLING INDUSTRIES, LLC,**

Case No. A-20-818624-J

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18 **Nevada, and DOES I through X and ROE**
19 **CORPORATIONS XX through XXX,**

20 **Respondents.**

21 **SUMMARY OF RECORD ON APPEAL**

22 The attached documents constitute the Record on Appeal in this matter of the
23 Petition for Judicial Review of the Decision and Order of the State Environmental
24 Commission (SEC) and Nevada Division of Environmental Protection (NDEP) dated
25 June 26, 2020, Bates-stamped pages NDEP 1-173.

26 **Index to Administrative Record re: Decision and Order dated June 26, 2020**

DATE	DESCRIPTION	Bates Range SE ROA	
02/15/20	Request for Appeal Hearing by Robert Ford and Supporting Documentation	1	33
03/11/20	NDEP's Motion for Summary Judgment and Exhibits 1-5	34	66

Index to Administrative Record re: Decision and Order dated June 26, 2020

DATE	DESCRIPTION	Bates Range SE ROA	
03/12/20	SEC's Order Granting Prehearing Conference for Summary Judgment	67	68
04/24/20	Opposition to Motion to Summary Judgment and Exhibits A-C	69	107
05/15/20	NDEP's Reply in Support of its Motion for Summary Judgment and Exhibit 1	108	117
06/12/20	SEC's Notice of Prehearing Conference to Rule on Motion for Summary Judgment: NDEP Reclamation Permit #0171 – Revocation	118	119
06/12/20	SEC Prehearing Conference Agenda – Amended with New Meeting Access Information, ABC Recycling Industries, LLC, Reclamation Permit #0171	120	121
06/12/20	Transcript – SEC Prehearing Conference	122	170
06/26/20	SEC Order Granting the NDEP's Motion for Summary Judgment	171	173

AFFIRMATION

The undersigned does hereby affirm that the forgoing Summary of Record on Appeal does not contain the social security number of any person.

DATED this 22nd day of October, 2020.

AARON D. FORD
Attorney General

By: /s/ Daniel P. Nubel
DANIEL P. NUBEL
Deputy Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General,
and that on this 22nd day of October, 2020, I served a true and correct copy of the foregoing
SUMMARY OF RECORD ON APPEAL, by electronic service to the participants in this
case who are registered with the Eighth Judicial District Court's Odyssey eFileNV File &
Serve system to this matter:

Byron E. Thomas, Esq.
LAW OFFICES OF BYRON THOMAS
E: byronthomaslaw@gmail.com

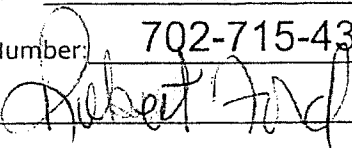
/s/ Dorene A. Wright

Form #3
Request an Appeal Hearing
Revised 6/2012



NEVADA
STATE ENVIRONMENTAL
COMMISSION

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

Name: Robert Ford
Physical Address: 2799 East Tropicana Blvd. Suite H Las Vegas, Nevada 89121
E-mail Address: rf702@yahoo.com
Telephone Number: 702-715-4347
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 regulations that give the State Environmental Commission jurisdiction to hear the appeal.

These appear to be the applicable NRS codes: NRS 519A.200, 519A.210, NRS 519A.260, NAC 519A.235., NRS 519A.150(9), NAC 519A.220, NAC 519A.400., NAC 519A.390. NAC 519A.220

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

1. NDEP failed to provide the test results of the tailings from American Borite.
2. NDEP failed to perform yearly inspections and approve reclamation activities.
3. NDEP will not allow soil enhancements to complete reclamation.
4. Some NDEP Inspectors have approved of soil amendments, some have not.
5. NDEP prolonged the reclamation activity by not allowing soil enhancements to be produced on-site.

Date of Request: February 15, 2020

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

ABC Recycling Industries LLC



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

February 6, 2020

ABC Recycling Industries, LLC
Mr. Robert Ford
2799 East Tropicana Blvd. Suite H
Las Vegas, Nevada 89121

Sent via E-mail, FedEx No.
777674695739 & Certified Mail No.
9171969009350218708474

**RE: Decision to Revoke the Lathrop Mill Reclamation Permit #0171; and
Forfeit of the Reclamation Surety Cash Deposit**

Dear Mr. Ford,

This letter serves to notify ABC Recycling LLC (ABC) that the Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation (Division) has made a decision to revoke Lathrop Mill Reclamation Permit #0171 and forfeit ABC's cash deposit surety securing reclamation at that site.

Background

The Division issued a Notice of Noncompliance and Order on August 13, 2019. The Notice of Noncompliance and Order stated that ABC failed to pay its annual reclamation permit fee of \$4,166.00 by April 15, 2019 and directed ABC to pay the fee by September 13, 2019. Because ABC did not acknowledge receipt of the Notice of Non-compliance and Order, the Division sent a second Notice of Noncompliance and Order via E-mail and Federal Express, return receipt requested, on September 16, 2019, which required ABC to pay its annual reclamation fee by October 11, 2019. ABC acknowledged receipt of the second Notice of Noncompliance and Order, but did not make its annual permit fee payment.

On November 21, 2019, the Division sent a follow-up letter to ABC by E-mail and Federal Express. The letter notified ABC that the Division had set a hearing date for January 10, 2020 regarding possible suspension or revocation of ABC's reclamation permit and forfeiture of its cash deposit surety deposit. You attended the hearing on behalf of ABC, and Todd Process and I attended on behalf of the Division. During the hearing you discussed ABC's difficulties in complying with permit terms and statutory requirements to reclaim the site and stated that the primary owner of the company was reluctant to put additional money into the property and pay the past due annual reclamation permit fee. At the end of the meeting Mr. Process and I provided you with a final deadline of January 24, 2020 to submit ABC's annual permit fee payment. In addition, we explained to you that failure to pay the annual fee would result in permit revocation and forfeiture of the cash deposit surety held by the Division for site reclamation. As the date of this letter, ABC has not paid its annual permit fee.

Discussion

Mining operators are required to obtain a reclamation permit for the land disturbed as a result of mining operations, agree in writing to be responsible for such reclamation, and post a surety for the cost of reclamation in the event the operator fails to perform as required by the permit.¹ On or before April 15 of each year, a reclamation permittee must submit a report to the Division regarding land disturbance and reclamation activities and pay an annual permit fee.² The Division may revoke an operator's reclamation permit on finding, after notice and hearing, that the permittee violated any provision of NRS 519A.010 to 519A.280, inclusive, or any regulation adopted by the Commission pursuant to 519A.160.³ The Division may also order the forfeiture of the operator's surety upon revoking the operator's permit.⁴ A reclamation permittee's failure to pay its annual permit fee would constitute grounds for permit revocation and surety forfeiture.

As described above, ABC held a reclamation permit for operation of Lathrop Mill and was required to pay an annual permit fee of \$4,166 by April 15, 2019. ABC failed to pay the annual permit fee by that date and subsequent dates identified in the Division's Notices of Non-Compliance and Orders issued on August 13, 2019 and September 13, 2019. The Division notified ABC of and held a hearing on January 10, 2020 regarding ABC's failure to pay its annual reclamation permit fee as required by NRS 519A.260 and NAC 519A.235. At the hearing, ABC indicated that it was reluctant to put additional money into the property and pay the past due annual permit fee, which is not valid justification for its failure to comply with its statutory and regulatory obligations to pay an annual permit fee and reclaim the land after mining is complete.

The Division finds that ABC is in violation NRS 519A.260 and NAC 519A.235, due to its failure to timely pay its annual reclamation permit fee and revokes ABC's permit, effective 10 days from the date of this letter.⁵

The Division also orders the forfeiture of ABC's \$205,791.00 cash deposit in its entirety, effective 10 days from the date of this letter, since the cash deposit is based on the estimated costs for reclamation of the site and ABC has not indicated a willingness or intent to fulfill its obligations to reclaim the site as required by its reclamation permit. To the extent that the \$205,791.00 cash deposit surety is not sufficient to fully reclaim the site, ABC is advised that it may be liable for the additional costs spent to satisfy this statutory and regulatory requirement.

This decision is final and not subject to review unless, within 10 days after the date of such Decision is served, the State Environmental Commission (SEC) located at 901 S. Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, receives a request for a hearing by written petition SEC Form 3.

¹ NRS 519A.200, 519A.210.

² NRS 519A.260, NAC 519A.235.

³ NRS 519A.150(9), NAC 519A.220, NAC 519A.400.

⁴ NAC 519A.390.

⁵ NAC 519A.220 (stating that revocation is effective not later than 30 days after the operator is sent written notice by the Division setting forth the facts and conduct warranting revocation).

If you have any questions concerning this matter, please contact me at (775) 687-9397 or jsawyer@ndep.nv.gov.

Sincerely,



Joe Sawyer, P.E., Chief
Bureau of Mining Regulation and Reclamation

Enclosure: SEC Form 3

Ec: Greg Lovato, Administrator, NDEP
Todd Process, Supervisor, BMRR Reclamation Branch
Rick Perdomo, Esq., Deputy Administrator, NDEP
Todd Suessmith, Permit Writer, BMRR Reclamation Branch
Samantha Thomson, Public Information Officer, NDEP
Val King, SEC
Rich Perry, NDOM
Nye County Board of Commissioners

Law Offices of
Steven G. Gibbs

Telephone: 661-633-1144

2204 Truxtun Avenue
Bakersfield, California 93301

Facsimile: 661-633-1640
E-mail: lawgibbs@pacbell.net

May 24, 2012

VIA EMAIL & U.S. MAIL

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
901 South Stewart Street, Suite 401
Carson City, Nevada 89701

**RE: RELEASE OF COMPLETED BOND FUNDS TO
TRUST ACCOUNT OF ATTORNEY STEVEN G. GIBBS
FOR PROPER DISBURSAL AS WELL AS
SUPPORTING DOCUMENTATION**

Dear Mr. Holmgren:

Thank you so much for the conference call earlier this week. I have had an opportunity to discuss the matter with my client and I can now clarify a couple of the issues addressed as well as update you on how my client would choose to move forward on his private land. First, my client has relied upon past representations from your Department regarding work that was necessary to be completed on the property and has been diligently pursuing that course of action. It does not appear appropriate to abruptly discontinue all of those plans and take this matter in an entirely different direction merely to transfer the entirety of the bond at present.

As referenced above, my client relied upon the representations made by you and your department to incur substantial fees in undertaking the reclamation plan. I previously outlined these efforts and made a demand that the sum of \$368,425 be transferred to my trust account in order that I could issue the appropriate checks in order to pay the bills which have already been incurred in furtherance of the reclamation plan now existing on the property. I therefore must renew my prior demand regarding the partial pay down of the bond monies for the purpose they were intended.

One of the very important issues discussed in our conference call was the future industrial use for the property and the necessity for filing a public disclosure and notice

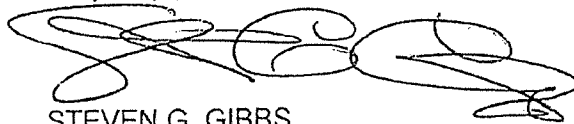
Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
May 24, 2012
Page 2

about the use of the property in order to do a "major modification" upon the property and therefore take this matter out of jurisdiction with your department which would completely take the necessity of bonding out of your department and out of the state regulations due to the transfer of use. However, my client is still evaluating the entire usage he plans to do on the property and that evaluation may take several months. In the meantime it is his intent to continue the planting, seeding and watering at the facility in order to comply with the reclamation plan but he is incurring significant costs on a per month basis. Simply stated, the bills need to be reimbursed immediately in order for any productive use to be made to this property and in order that my client can move forward on those operations the interim payment of the \$368,425 should not be delayed any further.

My client has already been in contact with your department and is in the process of finalizing all permit transfers in order to make sure everything is in his name and that process should be completed within the next few days. Thereafter, please contact me regarding the appropriate way to transfer the aforementioned monies so that the work which is already been completed based upon the reclamation plan can be reimbursed out of the funds which are set aside for exactly that purpose. Further, it is anticipated that within the next few months a more particular and specified plan can be put in place so as to move forward on the "major modification" plan so as to take the entire matter out of your department as well as the provisions of regulation of 519A.

Therefore, contact me at your earliest convenience as to when the interim fees can be transferred to my trust account in order that they may be orderly dispersed for the work completed as per the reclamation plan. I anxiously await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SGG', with a stylized flourish extending to the right.

STEVEN G. GIBBS

SGG/kmh
cc: Mr. Robert Ford

ATTACHMENT A

Documentation of Reclamation Activities for Surety Release

An operator may request surety release in accordance with applicable State and Federal regulations. The following documentation must be submitted simultaneously to NDEP and the Federal land management agency prior to the agencies conducting a site inspection:

MINING OPERATIONS

1. **Map(s)** clearly identifying the area, noting specific treatments and sampling locations (as applicable).
2. Description of the following activities:
 - A. **Earthwork:**
 - 1) The number of acres regraded and/or ripped.
 - 2) Final slope angles left after regrading.
 - 3) Methodology used to check final slope angles (e.g., clinometer, transit, etc.).
 - 4) The number of acres that received topsoil/growth medium.
 - 5) Depth and source of topsoil/growth medium and application method.
 - 6) Dates of initiation and completion of activities.
 - B. **Revegetation Activities:**
 - 1) The number of acres that were seeded and/or planted.
 - 2) Seed bed preparation methods utilized.
 - 3) Seeding/planting methods used (e.g., broadcast seeding, etc.).
 - 4) Provide information on how seed was covered.
 - 5) Seed mix and seeding rate; document by maintaining seed tags and any testing results (PLS, germination, noxious weeds, etc.).
 - 6) The number of acres that received fertilization, mulch or amendments.
 - 7) Fertilizer (N-P-K, type, application rate, application method).
 - 8) Mulches and soil amendments (type, application rate, and application method).
 - 9) Date of initiation and completion of activities (such as seeding, seed bed prep, irrigation).
 - C. **Final Revegetation Sampling:**
 - 1) Adjacent representative vegetation type or range site description (baseline data).
 - 2) Sampling method (e.g., line intercept).
 - 3) Number of samples taken (disturbed and adjacent representative sites).
 - 4) Statement of methodology demonstrating sample size, adequacy and how the location of sampling sites were determined.
 - 5) Results of sampling (copy of sampling worksheet) for disturbed and representative areas. Indicate all perennial species located.
 - 6) Dates of sampling.
 - D. **Other reclamation activities** such as; structure and debris removal, safety feature installation, erosion control treatment, equipment removal or other permit requirements.
3. Detailed calculation of the surety amount proposed for release if applicable.
4. Prior to release, a field inspection is required to verify that reclamation has been performed in accordance with the approved reclamation plan and permit.

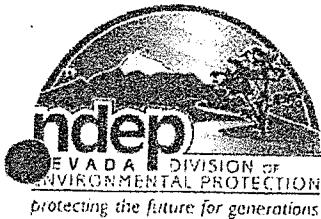
ATTACHMENT A

Documentation of Reclamation Activities for Surety Release

An operator may request surety release in accordance with applicable State and Federal regulations. The following documentation must be submitted simultaneously to NDEP and the Federal land management agency prior to the agencies conducting a site inspection:

EXPLORATION PROJECTS

1. **Map(s)** clearly identifying the area, noting specific treatments and sampling locations (as applicable).
2. Description of the following activities:
 - A. **Earthwork:**
 - 1) The number of acres regraded.
 - 2) Dates of initiation and completion of activities.
 - B. **Revegetation Activities:**
 - 1) The number of acres that were seeded and/or planted.
 - 2) Seed bed preparation methods utilized.
 - 3) Seeding/planting methods used (e.g., broadcast seeding, etc.).
 - 4) Provide information on how seed was covered.
 - 5) Seed mix and seeding rate; document by maintaining seed tags and any testing results (P.L.S. germination, noxious weeds, etc.).
 - 6) The number of acres that received fertilization, mulch or amendments.
 - 7) Fertilizer (N-P-K, type, application rate, application method).
 - 8) Mulches and soil amendments (type, application rate, and application method).
 - 9) Date of initiation and completion of activities.
 - C. **Other reclamation activities** such as; drillhole plugging, structure and debris removal, safety feature installation, erosion control treatment, equipment removal or other permit requirements.
3. Detailed calculation of the surety amount proposed for release if applicable.
4. Prior to release, a field inspection is required to verify that reclamation has been performed in accordance with the approved reclamation plan and permit.



STATE OF NEVADA

Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

July 9, 2012

Mr. Robert Ford
Cadence Industries I LLC
1231 Sharon Road
Las Vegas, NV 89106

INSPECTION REPORT FOR:

Project: Lathrop Mill Facility
Date: 6/27/2012
Inspector: Todd Suessmith

Dear Mr. Ford:

The Reclamation staff of the Bureau of Mining Regulation and Reclamation (BMRR) conducted an inspection at the Lathrop Mill Facility.

Inspection Comments:

Cadence Industries I LLC: Robert Ford
Lunas Construction: Norberto Madrigal
Glorieta Geoscience Inc.: Jay Lazarus
Alpha Environmental Services: Laurie Sanders
BLM: Dave Fanning
BMRR: Todd Suessmith, Dave Willard

BMRR conducted a general site visit of the Lathrop Mill project site. Currently Cadence Industries I, LLC (CI) is working on site to develop an organic or part organic mulch material to apparently assist in revegetating the site per the approved reclamation plan and to also reduce dust emissions from the site. A rubber pipeline was observed which appears to run from a pipe on the west side of the Mill Hill area across the North Tailings Impoundment to the Northwest corner of the project. BMRR believes this area was stripped of material to use as cover for the exposed tailings in 2007/2008. Apparently CI is obtaining "green waste" from sources or a source in Clark County and is transporting it to Lathrop Millsite in order to apply water to the material in order to create a mulch like material for the revegetation effort. BMRR observed dark (green waste?) material in standing water in the northwest corner of the property. It seems similar to an open air composting pile. BMRR understands some of this material is landscape waste from Las Vegas. Coupled with this, BMRR understands that CI is considering adding "crumb rubber" to the surface of the project to further help keep dust from blowing off the site. CI would apply this and the organic mulch to all 363.2 acres of the project. Apparently, CI would propose to recycle the tires on site using an existing cement slab for the tire



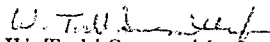
shredding circuit machinery. While on site, BMRR observed a loader on the northeast side of the property spreading some mulch material on the surface. Per Mr. Ford a 12 acre area is having mulch applied at a depth of 2 inches in that area.

Mr. Ford indicated that he has been trying to work with Nye county to obtain Brownfield grants, but has not had any success to date. We traveled to the southern boundary of the project to observe the adjacent BLM trespass area. This area is where borrow material was allegedly taken for cover material and liquified tailings were trenched and allowed to fill the borrow area depressions. The BLM trespass and final reclamation of the tailings on public land is a separate issue from the approved reclamation plan and is not part of the plan or the RCE. An eight acre contingency pond is in the plan and the bond for placing two feet of cover and reseeding if the BLM required the tailings be put back onto private land. However, if the tailings are covered in place, then the contingency pond would no longer be needed.

Mr. Jay Lazarus, consultant for Lunas Construction was on site to evaluate the property for a proposed construction debris landfill. However, the idea would be that the project would be treated as a mine reclamation project since the existing known water right is a temporary mine/milling right which will expire once the site is no longer considered a mining project. The water wells, which are apparently in California are piped to the property with a six mile pipeline that is authorized under a right-of-way. Apparently the BLM is questioning whether this right-of-way is still in effect. If it has expired, the BLM indicated that it would not be re-issued.

Should you have any questions concerning this inspection report, please contact me at (775) 687-9412 or by e-mail at tsuessmi@ndep.nv.gov.

Sincerely,


W. Todd Suessmith, Jr.

Bureau of Mining Regulation and Reclamation

cc: Dave Fanning, BLM - Southern Nevada District
Dave Willard, BMRR - Closure Branch.
Jon Taylor, Bureau of Waste Management

Rubber mulch

From Wikipedia, the free encyclopedia

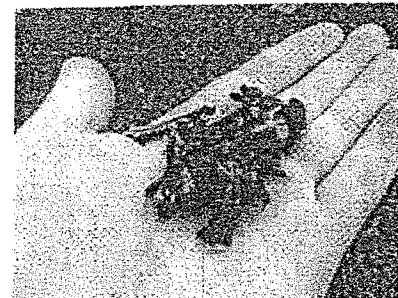
Rubber mulch is a type of mulch used in gardens and sustainable landscaping that is made from 100% recycled rubber.

Contents

- 1 Composition
- 2 Advantages
- 3 Disadvantages
- 4 Environmental Impact and Safety Testing
- 5 Sustainability and LEED Credits
- 6 See also
- 7 References
- 8 External links

Composition

Rubber mulch generally consists of either waste tire buffings or nuggets of rubber from tires that are ground up whole, after having their steel bands removed. Almost any tire can be used to make rubber mulch, including passenger vehicle tires and large truck and trailer tires. Buffings are produced from recycled truck tire tread when the remainder of the worn-down tread is removed from the tire prior to retreading. Buffings are generally thin slivers of rubber. Nuggets range in size from 10 mm to 32 mm, or 3/8 inch to 1 1/4 inch.



Rubber mulch nuggets. The white fibers are nylon cords, which are present in the tires which the mulch is made from.

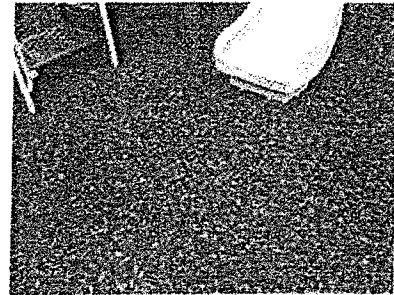
Advantages

Rubber mulch provides several advantages over plant material based mulches. For landscaping and gardening purposes, both nuggets and buffings insulate soil from heat allowing a 2 or 3 degrees F higher soil temperature difference over wood mulches. Rubber mulch is beneficial for soil moisture as rubber is non-porous and does not absorb water on its way through to the soil. It also reduces fungus growth and plant growth, and becomes a weed barrier as weed seeds dehydrate in the mulch before reaching the soil. Neither nuggets nor buffings provide any humus to compacted soil types.

Another advantage over plant-material mulches is its elasticity, which gives it a springy quality when used in a fairly thick layer. This makes it a natural choice for playgrounds, where the extra springiness provides additional safety for children when they fall off of playground equipment. Tests have shown rubber mulch is superior in breaking falls^[1] to traditional bark mulches. The International Play Equipment Manufacturers Association has certified some rubber mulches for ASTM F1292-09.^[2] It can

be 97% wire free for landscape use and 99.9% wire free for playgrounds. Rubber mulch is also becoming a product of choice used in horse arenas for footing material when mixed with sand. It can be found in nugget or shredded style.

Rubber mulch is seen as an effective and safe alternative to wood mulch, reducing the regional and global carbon footprint by reusing materials that would otherwise end up in landfills. Its durability can be up to twelve times greater than wood mulch- with wood mulch lasting an average of four seasons- as it doesn't deteriorate over time.



Rubber mulch seen with playground equipment in the background.

Disadvantages

- Some recycled varieties may leach chemicals(some toxic) which are harmful to plants^{[3][4][5]}
- Rubber mulch, like some organic mulches, is a hazard if ignited.

Although rubber mulch is generally safe, recycled tire rubber leachates do contain certain minerals and compounds which may cause concern in high concentrations. Recycled tire mulch can contain trace amounts of various minerals from the tire manufacturing process and other chemicals that may have been picked up during the tire's service life.

Environmental Impact and Safety Testing

The Environmental Protection Agency (EPA) has endorsed the use of recycled rubber to cushion the surfaces of children's playgrounds. For more information, visit the EPA website (<http://www.epa.gov/osw/conservation/tools/cpg/products/playgrnd.htm>) .

The Environmental Protection Agency (EPA) recently studied air and surface samples at four fields and playgrounds that use recycled tires. The limited study, conducted in August through October 2008, found that the concentrations of materials that made up tire crumb were below levels considered harmful. In addition, the overall study protocol and many of the methods were found to be appropriate and could be implemented in the field. The details of the EPA's study can be found at: www.epa.gov/nerl/features/tire_crums.html (http://www.epa.gov/nerl/features/tire_crums.html)

The Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency tested skin sensitization by playground surfaces made of recycled tires and found no sensitization observed suggesting that these surfaces would not cause skin sensitization in children, nor would they be expected to elicit skin reaction in children already sensitized to latex. Study dated January 2007 can be viewed at: www.ciwm.ca.gov/Publications/Tires/62206013.pdf (<http://www.ciwm.ca.gov/Publications/Tires/62206013.pdf>)

ChemRisk, Inc. in Pittsburgh conducted a review of exposure to recycled tire rubber found on playgrounds and synthetic turf fields. They concluded that no adverse human health or ecological health effects are likely to result from these beneficial reuses of tire materials. Study dated July 17, 2008. Detailed information and more studies can be found at:

www.syntheticurfCouncil.org/displaycommon.cfm?an=1&subarticlenbr=91
(<http://www.syntheticurfCouncil.org/displaycommon.cfm?an=1&subarticlenbr=91>)

Sustainability and LEED Credits

Because of its long life and durability, Rubber Mulch is considered a Green building and Sustainable landscaping material. The use of Rubber Mulch in Playgrounds, Landscaping, Equestrian Arenas, Training Courses, Ballistic Ranges and other applications can earn LEED Credits for Recycled Content (Credit 4.1, 4.2), Regional Materials (Credit 5.1, 5.2), Site Stewardship (Credit 6.1, 6.2) and Water Efficiency (Credit 1.1). LEED Sheet for Rubber Mulch LEED Credits (<http://www.pinnaclerubbermulch.com/docs/Rubber-Mulch-LEED-Sheet.pdf>) .

See also

- Mulch
- Rubber
- Retreading
- Tire Recycling
- Green Building
- Sustainable landscaping
- Sustainability

References

1. ^ EPA playground surface (<http://www.epa.gov/waste/conserve/tools/cpg/products/playgrnd.htm>)
2. ^ IPEMA Certification Description (<http://www.ipema.com/Products/default.aspx?Type=F1292>)
3. ^ Natures Way Resources (<http://www.natureswayresources.com/DocsPdfs/RubberMulch.pdf>)
4. ^ The Myth of Rubberized Landscapes, Linda Chalker-Scott, Puyallup Research and Extension Center, WSU (http://healthychild.org/resources/article/the_myth_of_rubberized_landscapes)
5. ^ Rufus L. Chaney Environmental Chemistry Lab USDA-Agricultural Research Service (<http://www.sare.org/sanet-mg/archives/html-home/18-html/0259.html>)

External links

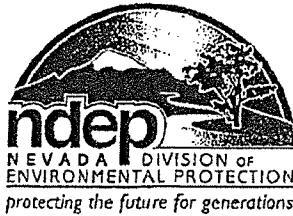
- N.Y. study shows artificial turf fields safe (http://www.usatoday.com/sports/2009-06-02-artificial-fields-study_N.htm)
- study shows rubber surface safe (<http://knol.google.com/k/jason-borch/h1n1-concussions-and-wood-mulch-what/34vfsqycmfcm/1>)
- The Myth of Rubberized Landscapes (http://healthychild.org/resources/article/the_myth_of_rubberized_landscapes)
- Artificial Turf: Exposures to Ground Up Rubber Tires - Athletic Fields, Playgrounds, Garden Mulch (http://www.ehhi.org/reports/turf/turf_report07.pdf)

Retrieved from "http://en.wikipedia.org/w/index.php?title=Rubber_mulch&oldid=481571382"

Categories: Sustainable gardening Recycled building materials Sustainable products

Sustainable building Soil improvers Water conservation Pavements

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STATE OF NEVADA

Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

January 18, 2013

Mr. Steven G. Gibbs
2204 Truxtun Avenue
Bakersfield, CA 93301

RE: Response To Cadence Industries I LLC Request for Reclamation Work Accomplished at the Lathrop Mill, Based Upon Submissions, Dated September 21, 2012, December 7, 2012, and Supplemental Materials Submitted on January 7, 2013; Reclamation Permit 0171.

Dear Mr. Gibbs,

The Bureau of Mining Regulation and Reclamation (BMRR) has reviewed the above mentioned information submitted by Cadence Industries I LLC (Cadence) for reclamation work completed at the Lathrop Mill site. The supplemental material submitted on January 7, 2013, in a format as requested by the BMRR was most helpful in evaluating the bond reduction request.

This office has created two spreadsheets, in a format similar to the January 7, 2013 submittal, to explain project bond money approved for release and project bond money to be retained. These are included with this correspondence as Attachment A and Attachment B, respectively.

The BMRR has calculated a refund amount of \$119,348.00, as shown in Attachment A, for reclamation work completed on the following areas: Historic Tailings 1 and 2; Mill Hill; Soil Borrow 1; Soil Borrow 2; and Soil Borrow 3. These were the five areas discussed during a conference call on January 7, 2013, among BMRR and your client, Mr. Ford, yourself, and other associates of Cadence.

As was discussed during the conference call, the release of project bond money associated with the ABC North and South Tailings would not be approved as additional reclamation work per the 2009 reclamation plan (BMRR approved November 19, 2009) remains to be completed on these two facilities. This includes the area referred to as the Embry Parcel which contains the eastern quarter of the ABC South Tailings. Adequate documentation was not included in the recently submitted material to evaluate and delineate whether "non-tailings" disturbed areas in the Embry parcel have been satisfactorily reclaimed.

Since reclamation activities are still required at the Lathrop Mill Site, the BMRR does not approve the request for release of project bond money for mob/demob of equipment and abandonment of the project water well.

To determine the amount of project bond money associated with Reclamation Monitoring and Maintenance, Construction Management, and Indirect Cost available for release, this office calculated the project bond, using the Nevada Standardized Reclamation Cost Estimator (SRCE) Version 1.4.1, that would be required for completion of remaining reclamation activities per the 2009 approved reclamation plan. The results from this calculation are shown in Attachment B. The project bond calculation includes the costs for these three categories. The difference between the amount currently held and the amount required (Attachment B) for Reclamation



Mr. Steven G. Gibbs
January 18, 2013
Page 2

Monitoring and Maintenance, Construction Management, and Indirect Cost is the amount shown in Attachment A for refund.

The refund amount of \$119,348.00 will be transmitted to JP Morgan trust account 674355948, per your January 15, 2013 correspondence. With this refund a total of 148.9 acres of surface disturbance are removed from the Lathrop Mill Reclamation Permit 0171. Please be advised as this release did not occur till calendar year 2013, Cadence will be responsible for submission of an annual reclamation fee, by April 15, 2013, based on the permitted disturbance of 360.7 acres which were still considered unreclaimed at end of calendar year 2012. The annual reclamation fee invoice will be forwarded under separate cover within the next thirty days.

Should you have any questions concerning this letter, please contact me at (775) 687-9397 or Paul Comba at (775) 687-9402.

Sincerely,



Bruce Holmgren, P.E., Chief
Bureau of Mining Regulation and Reclamation

Attachments: A and B

cc: Robert Ford, Cadence Industries I LLC
Roland Rosenberg Jr., Sterling Pacific
Paul Comba, BMRR
Todd Suessmiller, BMRR

Print

Subject: Fwd: SOILS FOR SEEDING GROWTH
From: Robert Ford (rf702@yahoo.com)
To: dunn.mill@yahoo.com;
Date: Monday, April 2, 2012 3:21 PM

Begin forwarded message:

From: Todd Suessmith <tsuessmi@ndep.nv.gov>
Date: April 2, 2012 10:21:11 AM PDT
To: "rf702@yahoo.com" <rf702@yahoo.com>
Subject: FW: SOILS FOR SEEDING GROWTH

From: Todd Suessmith
Sent: Monday, April 02, 2012 10:06 AM
To: 'Robert Ford '
Cc: Bruce Holmgren; Paul Comba; Todd Suessmith
Subject: RE: SOILS FOR SEEDING GROWTH

Mr. Ford,

BMRR does not maintain a list of soil amendments or fertilizers. BMRR does not require an analytical sample be performed of the soil amendment prior to placement. Documentation of reclamation activities including the type of soil amendment, quantity and other details can be provided after application in the Attachment A surety release documentation.

From: Bruce Holmgren
Sent: Friday, March 30, 2012 11:15 AM
To: Todd Suessmith; Paul Comba
Subject: FW: SOILS FOR SEEDING GROWTH

Todd,

Find messages, documents, photos or people



Figure 2

Composite

← Back ↩ ⏮ ⏭ 📁 Archive 📁 Move 🗑 Delete 🛡 Spam

17

Fw: Lathrop Mill - Reclamation
Permit 0171

Yahoo Mail/Sent



Robert Ford

rt702@yahoo.com
702-338-7305
fbi contact



Robert Ford <rf702@yahc
To: scott@WWISINC.com

Nov 30, 2012 at 7:20 AM

Robert Ford

----- Forwarded Message -----

From: Robert Ford <rf702@yahoo.com>

To: Bruce Holmgren <bholmgre@ndep.nv.gov>; "Steve Gibbs (lawgibbs@pacbell.net)" <lawgibbs@pacbell.net>

Cc: Art Gravenstein <agravens@ndep.nv.gov>; Paul Comba

<pcomba@ndep.nv.gov>; Todd Suessmith <tsuessmi@ndep.nv.gov>

Sent: Thursday, August 2, 2012 6:21 AM

Subject: Re: Lathrop Mill - Reclamation Permit 0171

PLEASE DEFINE MULCH AND EXISTING PERMIT STATUS

Robert Ford

From: Bruce Holmgren <bholmgre@ndcp.nv.gov>

To: "Steve Gibbs (lawgibbs@pacbell.net)" <lawgibbs@pacbell.net>

Cc: Art Gravenstein <agravens@ndep.nv.gov>; Paul Comba

<pcomba@ndep.nv.gov>; Todd Suessmith <tsuessmi@ndep.nv.gov>;

"Robert Ford (rf702@yahoo.com)" <rf702@yahoo.com>


Sent: Wednesday, August 1, 2012 5:07 PM

Subject: Lathrop Mill - Reclamation Permit 0171

Mr. Gibbs,

Attached is the BMRR response to your 07/19/12 correspondence. The original will be mailed 08/02/12.

Thank you, Bruce Holmgren

 Download all attachments as a zip file

ndep permit....pdf
6566reclamation... .pdf
4/3/88

Robert E. Ford
1231 Sharon Rd.
Las Vegas, NV 89106

August 08, 2012

Nevada Department of Environmental Protection
Jon Taylor
Paul Comba

RE: Lothrop Wells/ Amargosa Mill

Hello,

I wanted to summarize the meeting info discussed on 8/6/2012. Robert Ford/ Cadence Industries, LCC a subsidiary of ABC Reclamation, LLC. The current permit 0171 is active mining reclamation permit. This permit allows for ripping, reseeding of 223 acres in which 83arces has now been ripped and soil amendments added to parts of the 83acres. The attachment of the permit allows soil amendments and mulch materials, the Bureau of Mining on 6/19/2012 visited the site and wrote a letter describing the site. The letter addresses the mulch being added along with other soil amendments that are to be added to improve the soils. After the meeting we went out and purchased a tire shredder (Jordon Machine) to grind tires to be used as mulch. The NDEP Solid Waste Management Dept (Jon Taylor, Dave Fanning and Dave Willard) was also at the 06/19/2012 site visit. A letter was sent on July 9, 2012 by a 3rd party, Alpha Environmental, Laurie Sanders, stating no tires could be ground. Bruce Holmgren replied stating, no use of tires unless approved by Solid Waste Management of the NDEP.

The property owner has a current permit for crushing aggregate and a HOT mix plant for making asphalt, Permit #17188. This allows for a source of crushing, milling, and screening and HOT mix production. Asphalt NAICS 324121 with Crumb tire rubber mixture.

We met on August 06, 2012 to discuss the mulch and Reclamation permit to use mulch and soil amendments for the site reclamation. When rubber was presented as a mulch and soils amendments, I was told this would NOT be an approved product by the NDEP for the reclamation of this site. As tires and tire byproducts will fall under the classification of solid waste products and the site would need to retain an approved solid waste permit. It was suggested by Art Gravenstein a Waste Management Plan and Permit be requested changing the Reclamation Project to a Class III landfill site. Needless to say

back on February 23, 2012 Jon Taylor requested I complete the reclamation first, prior to submission of the application for a Solid Waste Permit. Ford wanted to submit a plan in February 2012 and due to requirements of Bureau of Mining it could not be submitted.

The current market in Amargosa, NV is very slow. No recyclable materials are available to be used for the mining reclamation of the site. The ONLY green waste, wood, gypsum board, soils and other recyclables products available are located in the Greater Las Vegas Area, some 105miles for the reclamation site. The green waste is being used by the Moapa Paiutes for a compost operation, approximately seven mile from the Valley of Fire exit at I-15. With majority of the Valleys green being shipped to the Paiutes, has made the availability of green waste for the above reclamation project very low and difficult to obtain. The availability of Tires is abundant as they are NOT permitted to be land filled. With the use of tires as soil amendment and mulch this was an easy conclusion to use the tires. To date ABC has invested over \$150,000 in Labor and Equipment obtain a tire shredder, as well as trucks and trailer to haul the tires to the site.

With tires NOT being available for use, the only material available to be used as ground cover is Commercial Construction debris such as wood, plastic, carpet, gypsum board and a mix of other products. It is NOT our intention to spend an excess amount of time to separate out this material as it is very labor intensive. It is better to use this material as a light weight filler to complete the Reclamation Project by using materials known as C&D waste and to modify the existing permit to a Class III landfill. This would allow the 223acres of tailings ponds to be covered and reseeded as part of the closure plan for the 223acres.

We propose a modification to the existing permit to obtain a temporary Class III landfill, until a permanent plan is submitted for review. A permanent plan to be submitted with in 90days. It was understood an application/ plan could be submitted if the mining dept would agree to keep the 0170 permit active until the Class III application process was complete.

Bruce Holmgren agreed to let revegetation go after the site was covered with C&D and to release the Bond proceeds currently held by the NDEP for the completion of the Reclamation work. Jon Taylor stated the Permit would take MONTHS since he was very busy permitting other projects.

I recommend to permit the temporary permit as the existing ponds already have liners that are filled with high limits of heavy metals and boron's. The temporary permit would allow for ground coverage of the site, to stop the existing soils from becoming air-born and traveling to other properties.

Thank you,

Robert E. Ford

Law Offices of
Steven G. Gibbs

Telephone: 661-633-1144

2204 Truxtun Avenue
Bakersfield, California 93301

Facsimile: 661-633-1640
E-mail: lawgibbs@pacbell.net

May 31, 2017

VIA EMAIL & U.S. MAIL

Mr. Todd J. Process,
Environmental Geoscientist and
Reclamation Supervisor
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

**RE: UNAVAILABILITY OF STEVEN GIBBS AND
ROBERT FORD UNTIL JUNE 19, 2017 AND
NEED TO CLARIFY CURRENT STATUS ON PERMITTED USE**

Dear Mr. Process:

I have been reviewing the emails between my client Robert Ford and the Mining Regulation and Reclamation, which have recently been sent to my client. My understanding is that a meeting and inspection is necessary for which my client has requested my presence. Further, I am unavailable until the week of June 19, 2017 but generally can make myself available thereafter. I request that the meeting between the principal parties be set in that timeframe.

I previously have had extensive correspondence with your office and Mr. Bruce Holmgren regarding reclamation issues on this site as well as bond reimbursement through my office on behalf of Mr. Ford and his business. My understanding is that the site is presently permitted for soil enhancement to encourage and help with reclamation. My understanding at that time was that there was no specific approved list of materials for the soil enhancement in order to help with the reclamation.

These are important issues as my client has now entered into a five-year contract to get gypsum material as well as manure from Las Vegas to be spread on the property which will enhance the ability to grow vegetation as well as general soil

NDP 27
APP 0048

Mr. Todd J. Process,
Environmental Geoscientist and
Reclamation Supervisor
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
May 31, 2017
Page 2

enhancement. The Amagosa Nevada site has 687 acre-feet of water available for use according to prior agreements and chain of title. Mr. Ford's company, ABC Recycling Industries, intends on completing the reclamation in order to be able to use the site for agriculture after the soil enhancement efforts are completed and it has been receded. The ponds which exist on the site were tested by American Borate and Galtar prior to my client and his company's ownership of the property and they were deemed to be satisfactory. Please indicate whether or not there are any problems with any testing or the status of any of the ponds on the site. In order to move forward, my client needs to be assured that the ponds do not need to be removed or retested. Further, it has been determined by my client and his company that the amount necessary to complete the reclamation and allow the land to be returned to usable property will exceed the amount withheld by NDEP.

At this point the chemicals in the ponds have not allowed any growth nor has it dried per the American Borate approved plan. It appears that the underestimated bond posted prior to 2011 had already been reduced to \$605,000 prior to my client acquiring the parcels. Additionally, the water rights' value will be lost to the site if it is not reclaimed so that it may grow some type of plant life. This may require my client or his company needing potential state grant assistance in order to complete this task. The reclamation consists of restoring process to the ecological integrity of those disturbed mine land areas, such as the 372 acres located at 1995 Diaz Rd., Amagosa, NV permit number 0171. This process involves management of all types of physical, chemical and biological disturbances of soils, such as pH fertility, microbial community and various soil nutrient cycles that makes the degraded land soil productive. Productivity of the soil can be increased by adding various natural amendments, such as sawdust, wood residues, sewage sludge, and animal manures, as those amendments stimulate the microbial activity which makes the nutrients and organic carbon available for growth on the subject site.

The soil properties are important for plant growth, and my client and his consultants believe the soil will be enhanced and benefit not only the specific site but the surrounding area by adding to the physical properties, rock content soil texture, soil aggregation, moisture bulk density, slope, topography stability, topsoil and biological properties, soil micro bacteria and gypsum, which all can be incorporated into the soil at the site to replace the sodium with calcium on the surface thereby allowing proper growth. This is part of the existing permit reclamation, and this is what my client intends to complete. However, recent communication with my client seems to cast doubt on being able to complete the reclamation as previously planned. Further, since my client

Mr. Todd J. Process,
Environmental Geoscientist and
Reclamation Supervisor
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
May 31, 2017
Page 3

has received no official change in status on the permitted use the confusion on our side is what has changed since 2014, when the last site inspection occurred with Paul Comba. Our understanding is that the revegetation is an important component of the existing permit, and my client's company needs an inspector to come to the site for the required inspections on the 372 acres. I therefore request that my office be given a complete permit with a full attachment so as to allow us to clearly delineate the parameters of the site's use and required reclamation.

Thank you for your attention to this matter. Should you have any additional questions or need for further documentation, please feel free to contact me.

Very truly yours,

STEVEN G. GIBBS

SGG/kmh
cc: Mr. Robert Ford

*Law Offices of
Steven G. Gibbs*

Telephone: 661-633-1144

2204 Truxtun Avenue
Bakersfield, California 93301

Facsimile: 661-633-1640
E-mail: lawgibbs@jacobell.net

September 21, 2012

VIA EMAIL & U.S. MAIL

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
901 South Stewart Street, Suite 401
Carson City, Nevada 89701

RE: *additional clarifications and bond reduction request*

Dear Mr. Holmgren:

I have been reviewing the emails between the meeting of Mining reclamation and waste management, which occurred in the latter part of August, 2012, and I wanted to cover a few issues concerning the 223 acres of boron ponds that have already been filled with dirt at the site. The site still has a few remaining sinkholes and the settlement around them appears throughout the site, after reviewing the HS a golden letter concerning lightweight issues of materials. Further, the heavy fill material causes the wet tailing to move more than it would in light tailing, whereas the light tailing would not cause any movement in the near future. My client proposes not to use the tire mulch as per previous in NDEP instructions, but instead would use a lightweight mix of wood waste, green waste, cardboard, plastic, and inner compounds, with a mix of the borrow materials from the 80 acres already on site. The borrow area material will be mixed with the mulch so as to utilize some of the on-site clay material to hold down airborne particulate matter, with the lightweight soil amendments so as to finally cover the entire site. This product will cut down on the blowing boron materials on-site as well as off-site.

The 223 acres have a 2 foot clay liner already installed. The clay liner prevents the heavy materials from getting into the water table. The NDP directive on April 2, 2012 was satisfied on all the pond test and liner information related to the heavy materials/metals and water table issues. This existing material on the ponds has been approved to be capped and in place by NDP without any further investigations as per 04-02-2012 NDEP letter (see attached). The current tests at the site show that some

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
September 21, 2012
Page 2

high metal limits in the Anderson-Egan report (according to Silver State Lab) show that it will take the use of soil amendments, which will consist of a mixture of gypsum board, wood, tree branches, plastic, cardboard, landscape, cuttings, and green waste mixed with the on-site borrow material from private land to enhance the growth of plant life. The soil amendments will be tested prior to any implementation by Silver State analytical laboratories located in Las Vegas (3638 Sunset Rd., Suite 100, Las Vegas, NV 89120.) Todd Suessmith has already told my client that no analytical lab test were required for the soils pursuant to the attached email sent on April 2, 2012.

Concerning the actual mill hill site, it will be left in place for future industrial use. The mill hill will be improved with borrow materials to make it more accessible. Further, the pond area is the only part of the property that would be mixed with lightweight material and With the soil amendments as related above. This method will allow my client, Robert Ford to eliminate dust, as well as cover the sinkholes. The bond reduction is attached for areas and parts of storage yards that are not needed on the bond. The bond reduction is attached for \$157,216 along with the map of borrow source areas to be utilized to mix with the lightweight soil amendments.

My client will still submit the modification into waste management and be able to transfer the existing permit to a class III landfill permit as discussed. The amount of the small class III landfill bond will not exceed the fill area depth of 1 foot of materials that will be required to cover the boron materials, thereby allowing growth. The Silver State Lab research from the chemical tests taken in 2007 relayed that the heavy metals were so high that it would not allow growth of any plants are natural desert weeds without substantial amendment. The current clay liners that are in place and the existing dam should be already engineered for the 1 foot of light materials to be installed.

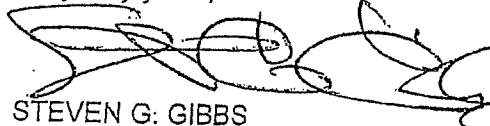
My client and I would like to greatly thank all of you at NDP who been involved with all of your help on the project to date. My client still needs a few clarifications to avoid any issues from spending the wrong amounts of funds by producing the improper mulches and soils for the reclamation, which would not be acceptable from NDP. To that end, my client wants to know whether or not he needs to get a permit to install the soil amendments and process on-site after the Silver State test to ensure that there is no contamination in materials under the active permit 0171 (which states that no tires can be included). The materials will be hauled on-site and tested monthly before installation in the sinkholes and the uncovered ponds on site only. The balance of the 223 acres will not be receded at this time until class III landfill modification is completed and new bond posted. After obtaining this class III landfill permit, there is no further requirement concerning the Mining Department and the balance of the seeding will be dismissed and complete bond refunded upon completion of the new class III permit.

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
September 21, 2012
Page 3

This is our understanding. Hopefully with the last clarifications. My client will be able to finalize the existing work and remove the daily water costs from the site.

Should you have any additional questions or need for further documentation, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'STEVEN G. GIBBS', with a stylized flourish at the end.

STEVEN G. GIBBS

SGG/kmh

cc: Mr. Robert Ford.

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**BEFORE THE STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION**

In the Matter of:

ABC RECYCLING LLC'S APPEAL OF
NDEP'S FEBRUARY 6, 2020 DECISION
TO REVOKE THE LATHROP MILL
RECLAMATION PERMIT #0171; AND
FORFEIT OF THE RECLAMATION
SURETY CASH DEPOSIT

NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION'S MOTION FOR
SUMMARY JUDGMENT

The Nevada Division of Environmental Protection ("NDEP"), by and through legal counsel, hereby files its Motion for Summary Judgment on ABC Recycling LLC's ("ABC") Appeal. This Motion is based on the attached Memorandum of Points and Authorities and all pleadings on file, the exhibits attached hereto, as well as all oral arguments the State Environmental Commission ("SEC") will hear on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Commission should enter judgment in NDEP's favor on ABC's Appeal because there are no genuine issues of material fact and NDEP acted within its authority in revoking ABC's Permit. NDEP has the legal authority to revoke a permit for the failure of an operator to pay its required annual permit fee by April 15. See NRS 519A.150(9) (granting NDEP authority to revoke for violation of a regulation adopted by the Commission), NRS 519A.260 (requiring a mine operator to pay an annual reclamation permit fee by April 15), NAC 519A.235 and 519A.240 (requiring a mine operator to pay an annual fee by April 15) and NAC 519A.390 (stating that a surety filed with NDEP is subject to forfeiture upon revocation of a permit). ABC did not pay its annual permit fee on April 15, 2019, and ABC's Appeal makes no contention otherwise. NDEP gave ABC multiple deadlines after April 15, 2019, to pay the annual fee, but ABC still refused to comply.

After multiple missed deadlines, NDEP notified ABC of its intention to hold a hearing concerning ABC's continued non-compliance with NRS 519A.260 and

1 NAC 519A.235 and 519A.240. An ABC representative, Robert Ford, attended the hearing
2 and did not indicate that ABC intended to pay the overdue annual fee. NDEP set
3 January 24, 2020, as ABC's final deadline to pay its annual permit fee, and ABC did not
4 pay the fee after the hearing. On February 6, 2020, NDEP notified ABC that it had
5 revoked the Permit and forfeited its cash surety bond under the authorities cited above.
6 As described more fully below, NDEP acted well within its statutory and regulatory
7 authority in taking these actions. For this reason, the SEC should enter judgment in
8 NDEP's favor without a hearing since the material facts that support NDEP's actions are
9 not in genuine dispute.

10 II. STATEMENT OF FACTS

11 On June 9, 2015, NDEP transferred reclamation permit #0171 (the "Permit") to
12 ABC for the operation of Lathrop Mill. See the Declaration of Joseph Sawyer, attached as
13 Exhibit 1, at ¶ 1. NRS 519.260 requires each operator holding such a permit to, on or
14 before April 15 of each year, pay NDEP a fee based on the amount of land that has been
15 disturbed by mining operations or exploration projects engaged in by the operator and not
16 reclaimed. Additionally, NAC 519A.235 establishes a regulatory fee due on April 15 of
17 each year that requires each mining operation for which a permit has been issued to
18 submit a fee based on the total amount of affected land. Pursuant to those statutes and
19 regulations, ABC was required to submit an annual permit fee of \$4,166 to NDEP by
20 April 15, 2019. *Id.* at ¶ 4. ABC failed to pay the fee by the April 15 deadline, and NDEP
21 issued a Notice of Noncompliance and Order on August 13, 2019. See NDEP's August 13,
22 2019, Notice of Noncompliance and Order attached as Exhibit 2. The Notice directed ABC
23 to pay the fee by September 13, 2019. *Id.* ABC did not respond to the Notice of
24 Noncompliance and Order, and NDEP sent a second Notice requiring payment by
25 October 11, 2019. See NDEP's September 16, 2019, Notice of Noncompliance and Order
26 attached as Exhibit 3. Although ABC acknowledged that it received the Notice, it still
27 failed to make its annual permit fee payment. See Exhibit 1 at ¶ 6.

28 ///

1 On November 21, 2019, NDEP sent ABC a letter setting a hearing date for
2 January 10, 2020, regarding possible suspension or revocation of ABC's reclamation
3 permit and forfeiture of ABC's cash deposit due to its failure to provide its annual permit
4 fee. See NDEP's November 21, 2019, letter attached as Exhibit 4. At the hearing, ABC's
5 representative, Robert Ford, informed NDEP that ABC was reluctant to put any
6 additional money into the property, which included paying the annual permit fee. See
7 Exhibit 1 at ¶ 8. At the end of the hearing, NDEP provided ABC with a final deadline of
8 January 24, 2020, to submit its annual permit fee. *Id.*

9 Despite NDEP's many attempts to gain compliance, ABC still failed to pay its
10 \$4,166 annual permit fee. *Id.* at ¶ 9. For that reason, NDEP sent a letter to ABC on
11 February 6, 2020, informing ABC that NDEP made the decision to revoke Lathrop Mill
12 Reclamation Permit #0171 and that ABC's cash deposit would be forfeited to reclaim the
13 site. See NDEP's February 6, 2020, Decision attached as Exhibit 5.

14 III. LEGAL ANALYSIS

15 A. The SEC May Grant Summary Judgment in NDEP's Favor at a 16 Prehearing Conference

17 A party aggrieved by NDEP's revocation of an operating permit may appeal to this
18 Commission. See NRS 445B.360. The appeal must state the Appellant's legal and factual
19 basis for the appeal. See NAC 445B.890(3). Under NAC 445B.8913, the Commission may,
20 upon a motion made by a party, conduct a prehearing conference to consider an action or
21 procedure that would expedite the disposition of the proceedings. NDEP requests that the
22 SEC utilize its power under NAC 445B.8913 to enter summary judgment in favor of
23 NDEP.

24 Summary judgment is appropriate when "no genuine issue of material fact exists,
25 and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*,
26 121 Nev. 724, 729 (2005). A factual dispute is genuine when the evidence is such that a
27 rational trier of fact could return a verdict for the nonmoving party. *Id.* While the
28 pleadings and proof must be construed in a light most favorable to the nonmoving party,

1 that party bears the burden to "do more than simply show there is some metaphysical
2 doubt" as to the operative facts in order to avoid summary judgment being entered in the
3 moving party's favor. *Id.* at 732. "If the non-moving party will bear the burden of
4 persuasion at trial, the party moving for summary judgment may satisfy the burden of
5 production by either (1) submitting evidence that negates an essential element of the
6 nonmoving party's claim, or (2) 'point out . . . that there is an absence of evidence to
7 support the nonmoving party's case.'" *Cuzze v. Univ. & Cmty. College Sys. of Nev.*,
8 123 Nev. 598 (2007), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548
9 (1986).

10 **B. There Are No Genuine Issues of Material Fact in This Case – ABC's**
11 **Appeal Does Not Dispute That it Failed to Pay its Mandatory Annual**
12 **Permit Fee**

13 ABC's Appeal does not dispute the underlying factual basis for NDEP's revocation
14 of the Permit. NDEP's February 6, 2020, letter revoking ABC's Permit makes clear that
15 NDEP based its decision on ABC's failure to timely pay its required annual permit fee.
16 See Exhibit 5. This annual fee payment is required by NRS 519A.260 and NAC 519A.235,
17 and critical to NDEP's Bureau of Mining Regulation and Reclamation, as 100% of the
18 Bureau costs and expenses are paid for by industry fees such as this. Exhibit 1 at ¶ 3.
19 NDEP's Bureau of Mining Regulation and Reclamation serves the vital function of
20 regulating the environmental impacts of the mining industry. *Id.* at ¶ 1. Notably, ABC's
21 Appeal does not contend that it paid the permit fee to NDEP. Rather, ABC's grounds of
22 appeal are entirely unrelated to NDEP's decision to revoke the Permit. See ABC's Appeal
23 at 2 ("NDEP failed to provide the test results of the tailings from American Borite").
24 Accordingly, no genuine issue of material fact exists regarding the factual basis for
25 NDEP's decision to revoke the Permit.

26 Further, ABC's Appeal does not claim that NDEP failed to provide ABC with due
27 process in revoking the Permit. NRS 519A.270, states that "if the Division has reason to
28 believe that any provision of NRS 519A.010 to 519A.280, inclusive, . . . or any regulation
adopted by the Commission pursuant to NRS 519A.160 has been violated, the Division

1 shall serve a notice of noncompliance upon the holder of the permit." The Division may
2 suspend or revoke a permit on the same grounds after notice and hearing.
3 NRS 519A.150(9). In this case, NDEP provided ABC with two notices of noncompliance
4 and conducted a hearing with ABC regarding its alleged violations. ABC's Appeal makes
5 no contention that NDEP violated any of the due process requirement in NRS 519A.270
6 and 519A.150(9), and so no issue of material fact exists on this issue.

7 Since ABC does not dispute that it did not pay its annual permit fee, or that NDEP
8 followed the notice procedures established in NRS 519A.150(9) and 519A.270, no genuine
9 issues of material fact exist in this case.

10 **C. Given That ABC Failed to Pay its Mandatory Annual Permit Fee,
11 NDEP Acted Lawfully in Revoking ABC's Permit**

12 Under NAC 445B.890(3), ABC is required to state the legal basis for its appeal, and
13 reference each provision of law that NDEP allegedly violated. In its Appeal, ABC asserts
14 only that NDEP's "final decision was affected by other error of law." See ABC's Appeal
15 at 1. An error of law is apparent if "the legal point is obvious, not reasonably in dispute."
16 *State v. Fuerte-Coria*, 196 Or. App. 170, 173, 100 P.3d 773, 775 (2004). An error of law is
17 not present when "any reasonable hypothesis can be found to support the questioned
18 interpretation." *Hanover Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 226 A.D.2d 533, 534,
19 641 N.Y.S.2d 547 (1996). Further, "an administrative agency charged with the duty of
20 administering an act is impliedly clothed with the power to construe the relevant laws
21 and set necessary precedent to administrative action, and the construction placed on a
22 statute by the agency charged with the duty of administering it is entitled to deference."
23 *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 624 (2013).

24 In this case, NDEP unquestionably acted within its legal authority in revoking
25 ABC's Permit. NRS 519A.150 states that NDEP may "suspend or revoke a permit upon a
26 noticed hearing and a finding by the Division that the holder of the permit violated any
27 provision of NRS 519.010 to 519A.280, inclusive, . . . or any regulation adopted by the
28 Commission pursuant to NRS 519A.160." Further, a surety filed with the Division is

1 subject to forfeiture if the permit is suspended or revoked pursuant to NAC 519A.220. See
2 NAC 519A.390. Under NAC 519A.220, "if the Division suspends or revokes a permit for
3 noncompliance with the provisions of 1. NAC 519A.010 to 519A.415, inclusive; [or]
4 Chapter 519A of NRS . . . the [] revocation is effective not later than 30 days after the
5 operator is sent notice by the Division setting forth the facts and conduct warranting the
6 revocation . . ."

7 As stated above, ABC violated NRS 519A.260 and NAC 519A.235 by failing to
8 timely pay its annual reclamation fee by April 15, 2019. Based on this fact alone, NDEP
9 had authority to revoke ABC's Permit and forfeit ABC's surety. NDEP took that action on
10 February 6, 2020, and that decision took effect ten days after it was made. ABC's Appeal
11 makes no claim that NDEP failed to follow the statutory due process requirements for
12 revoking its Permit. Based on these undisputed facts, it is clear ABC's failure to pay its
13 annual permit fee provided a sufficient basis to revoke ABC's Permit and forfeit its cash
14 surety. Therefore, NDEP committed no "error of law" in deciding to revoke ABC's Permit.

15 IV. CONCLUSION

16 For these reasons, the Commission should uphold NDEP'S February 6, 2020,
17 decision to revoke the Lathrop Mill Reclamation Permit #0171 because ABC's Appeal fails
18 to set forth any facts or law showing that NDEP acted outside the scope of its jurisdiction

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1 and authority. This case is appropriate for summary judgment because the material
2 underlying procedural and substantive facts that support NDEP's decision are not
3 genuinely in dispute, and NDEP's decision is based on a straightforward interpretation
4 and application of the applicable law.

5 DATED this 11 day of March, 2019.

6 AARON D. FORD
7 Attorney General

8 By:

Daniel Nubel
DANIEL P. NUBEL (Bar No. 13553)
Deputy Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1225
E: dnubel@ag.nv.gov
*Attorneys for Nevada Division of
Environmental Protection*

13
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that I am an employee of the State of Nevada, Office of the
16 Attorney General, and on this 11 day of March, 2020, I served a copy of the
17 foregoing, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S MOTION FOR
18 SUMMARY JUDGMENT, via email to:

19
20 Val King
21 Executive Secretary
22 State of Nevada
23 State Environmental Commission
24 E: vking@ndep.nv.gov

25 Robert Ford
26 ABC Recycling Industries LLC
27 2799 East Tropicana Blvd., Suite H
28 Las Vegas, Nevada 89121
E: rf702@yahoo.com

Daniel Nubel
Daniel P. Nubel

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INDEX OF EXHIBITS

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5.	NDEP's February 6, 2020, Decision	5

EXHIBIT 1

EXHIBIT 1

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

3 In the Matter of:

4 ABC RECYCLING LLC'S APPEAL OF
5 NDEP'S FEBRUARY 6, 2020 DECISION
6 TO REVOKE THE LATHROP MILL
7 RECLAMATION PERMIT #0171; AND
8 FORFEIT OF THE RECLAMATION
9 SURETY CASH DEPOSIT

**DECLARATION OF
JOSEPH SAWYER**

10 I, JOSEPH SAWYER, declare as follows:

11 1. I am the Chief of the Bureau of Mining Regulation and Reclamation (BMRR)
12 of the Nevada Division of Environmental Protection (NDEP). BMRR serves the vital
13 function of regulating the environmental impacts of the mining industry. As the Chief of
14 BMRR, I have personal knowledge of the matters asserted herein and am competent to
15 testify thereto.

16 2. On June 15, 2012, NDEP transferred Reclamation Permit #0171 to Cadence
17 Industries LLC. The Permit was subsequently transferred to ABC Recycling LLC ("ABC")
18 on June 9, 2015.

19 3. NRS 519A.260 requires each operator to, on or before April 15 of each year,
20 pay NDEP a fee of: (1) one dollar and fifty cents for each acre of public land administered
21 by a federal agency; and (2) five dollars and fifty cents for each acre of privately owned
22 land—which has been disturbed by mining operations or exploration projects engaged in
23 by the operator and not reclaimed. Additionally, NAC 519A.235 establishes a regulatory
24 fee due on April 15 of each year that requires each mining operation for which a permit
25 has been issued to submit a fee based on the total amount of affected land. These annual
26 permit fees are required by NRS 519A.260 and NAC 519A.235, and critical to BMRR, as
27 100% of the Bureau's costs and expenses are paid for by industry fees such as this.

28 4. Under the calculation provided in NRS 519A.260 and NAC 519A.235, ABC
29 was required to pay NDEP an annual permit fee of \$4,166 on April 15, 2019. This amount
30 includes a statutory fee of \$5.50 per acre of affected private land (212), which makes a

1 statutory fee of \$1,166. Additionally, the regulatory fee based upon the mine acreage
2 (212) is \$3,000. See NAC 519A.235(3)(c). Together, these amounts establish ABC's annual
3 permit fee amount of \$4,166.

4 5. ABC failed to pay its mandatory annual permit fee of \$4,166 by April 15,
5 2019. For that reason, NDEP issued a Notice of Noncompliance and Order on August 13,
6 2019. The Notice stated that it was "a result of ABC Recycling Industries, LLC failure to
7 submit the required annual reclamation report and to pay the applicable statutory and
8 regulatory fees (\$4,166.00) that were due on or before April 15, 2019, per NRS 519A.260
9 and Nevada Administrative Code 519A.235." The Notice advised that if the "fees are not
10 submitted by September 13th, 2019 . . . the Division will initiate action to revoke the
11 Lathrop Mill reclamation permit and may subject the posted cash surety amount of
12 \$205,791.00 into forfeiture." The document attached as Exhibit 2 to NDEP's Motion for
13 Summary Judgment is a true and accurate copy of the August 13, 2019, letter and
14 tracking information for the delivery of that letter.

15 6. The September 13, 2019, deadline set by NDEP in its Notice of
16 Noncompliance passed without payment by ABC. On September 16, 2019, NDEP sent
17 another Notice of Noncompliance to give ABC an additional opportunity to pay its
18 overdue annual permit fee. This Notice set a deadline of October 11, 2019, and once again
19 warned that the Division would initiate action to revoke the Permit if ABC did not pay
20 the fee by the deadline. The document attached as Exhibit 3 to NDEP's Motion for
21 Summary Judgment is a true and accurate copy of the September 16, 2019, Notice and
22 tracking information for the delivery of that letter. ABC acknowledged that it received
23 the Notice, but it still failed to make its annual permit fee payment.

24 7. On November 21, 2019, NDEP sent ABC a letter setting a hearing date for
25 January 10, 2020, regarding possible suspension or revocation of ABC's reclamation
26 permit and forfeiture of ABC's cash deposit due to its failure to provide its annual permit
27 fee. The document attached as Exhibit 4 to NDEP's Motion for Summary Judgment is a
28 true and accurate copy of the November 21, 2019, letter and tracking information for the

1 delivery of that letter.

2 8. At the hearing, ABC's representative, Robert Ford, informed NDEP that
3 ABC was reluctant to put any additional money into the property, which included paying
4 the annual permit fee. At the end of the hearing, NDEP provided ABC with a final
5 deadline of January 24, 2020, to submit its annual permit fee. Additionally, NDEP
6 explained that ABC's failure to pay the annual fee would result in permit revocation and
7 forfeiture of the cash deposit surety held by NDEP for site reclamation.

8 9. Despite NDEP's many attempts gain compliance, ABC still failed to pay its
9 annual permit fee by January 24, 2020. For that reason, NDEP sent a letter on February
10 6, 2020, informing ABC of NDEP's decision to revoke the Lathrop Mill Reclamation
11 Permit #0171 and forfeit of the reclamation surety cash deposit. This letter stated the
12 factual and legal basis for NDEP's revocation of the Permit and forfeiture of the deposit.
13 The document attached as Exhibit 5 to NDEP's Motion for Summary Judgment is a true
14 and accurate copy of the February 6, 2020, letter and tracking information for the
15 delivery of that letter.

16 10. As of the date of this Declaration, ABC still has not paid its annual permit
17 fee for 2019 or 2020.

18 I declare under penalty of perjury that the foregoing is true and correct to the best
19 of my knowledge, information and belief.

20 Executed this 10 day of March, 2020.

21 
22 JOSEPH SAWYER
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EXHIBIT 2

EXHIBIT 2



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
State Capitol Building
600 North Carson Street
Carson City, NV 89601

August 13th, 2019

Mr. Robert Ford
ABC Recycling Industries, LLC
2799 E. Tropicana Blvd. Suite H
Las Vegas, Nevada 89121

Sent Via email and Certified Mail
Certified Mail Receipt Number
9171 9690 0935 0218 1279 16

**RE: Notice of Noncompliance and Order – ABC Recycling Industries, LLC – Lathrop
Mill: Reclamation Permit # 0171**

Dear Mr. Ford:

The enclosed Notice of Noncompliance and Order issued by the Administrator of the Division of Environmental Protection (Division), pursuant to Nevada Revised Statutes (NRS) 519A.140, 519A.150 and 519A.270, requires compliance by ABC Recycling Industries, LLC with the terms and conditions of the Order by the dates specified.

The Notice of Noncompliance and Order was developed as a result of ABC Recycling Industries, LLC failure to submit the required annual reclamation report and to pay the applicable statutory and regulatory fees (\$4166.00) that were due on or before April 15, 2019, per NRS 519A.260 and Nevada Administrative Code 519A.235.

Please be advised that if the annual reclamation report and fees are not submitted by September 13th, 2019, the matter will be referred to the State of Nevada Office of the Controller for further collection efforts and the Division will initiate action to revoke the Lathrop Mill reclamation permit and may subject the posted cash surety amount of \$205,791.00 into forfeiture.

The attached Order is final and not subject to review unless, within ten (10) days from the date of this notice, the State Environmental Commission (SEC) located at 901 S. Stewart Street, Carson City, Nevada 89701, receives a request for a hearing by written petition (SEC Form 3).

If you have any questions concerning this matter, please contact me at (775) 687-9408.

Sincerely,

Todd Process
Reclamation Branch Supervisor
Bureau of Mining Regulation and Reclamation

Ec: Greg Lovato, Deputy Administrator, NDEP
Joe Sawyer, Chief, BMRR
Rick Perdomo, DAG Office
Todd Suessmith, BMRR Reclamation Permit Writer

Notice of Noncompliance

In the matter of ABC Recycling Industries, LLC this Notice of Noncompliance, dated August 13th, 2019 is made on the basis of the following facts, to wit:

1. The State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection (Division), under the authority of Nevada Revised Statutes (NRS) 519A.140 and 519A.150, has the duty and power to administer and enforce the provisions of NRS 519A.010 through 519A.280, inclusive, the regulations promulgated by the State Environmental Commission pursuant to NRS 519A.160; a plan for reclamation and any condition placed on a plan for reclamation; to hold hearings and issue orders and to take any other action reasonable and necessary to enable it to administer or enforce the provisions of NRS 519A.010 through 519A.280, inclusive.
2. Per Nevada Administrative Code (NAC) 519A.020 "Active" defined. Active means that operations or actions are being conducted at an exploration project or mining operation, which results in land being affected.
3. Per NRS 519A.040 "Affected" defined. Affected means that the surface of the land is or will be disturbed by mining, or that the land will be used: 1) as an evaporation or settling pond, leach dump, placer area or tailings pond or dump; or 2) in conjunction with any structure, facility, equipment, machine, tool, material or property incident to mining.
4. Per NRS 519A.070 "Exploration Project" defined. Exploration project means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, determining the presence, location, extent, depth or grade of any mineral, which affects the surface. The term does not include a small exploration project.
5. Per NRS 519A.080 "Mining Operation" defined. Mining operation means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, the development or extraction of any mineral. The term does not include an aggregate or sand pit or a small mining operation.
6. Per NRS 519A.090 "Operator" defined. Operator means any person who owns, controls, or manages an exploration or mining operation.
7. Per NRS 519A.260 Annual Submission of reports and payment of fees by operator; disposition of money received. Each operator shall, on or before April 15 of each year, submit to the Administrator a report relating to the status and production of all mining operations and exploration projects in which he has engaged and identifying each acre of land affected and land reclaimed by that mining operation or exploration project through the preceding calendar year, and shall pay to the Division a fee of: (a) one dollar and fifty cents for each acre of public land administered by a federal agency; and (b) five dollars and fifty cents for each acre of privately owned land which has been disturbed by mining operations or exploration projects engaged in by the operator and not reclaimed.

8. Per NAC 519A.235 (1) Annual Submission of fees for services by Division. On or before April 15, 1991, and on or before April 15 of each year thereafter, an operator of an exploration project or mining operation shall submit to the Division for services rendered by the Division the applicable fees required by this section.


9. The location of the Lathrop Mill is:
Portion of Section 36, Township 17 South, Range 49 East and Portion of Section 1, Township 18 South, Range 49 East; Mount Diablo Baseline and Meridian, Nye County, Nevada

The operator for the Lathrop Mill is ABC Recycling Industries, LLC. (Reclamation Permit #0171).

10. ABC Recycling Industries, LLC has failed to submit the required reclamation report and pay the applicable statutory and regulatory fees for calendar year 2018 that were due on or before April 15, 2019 for the Lathrop Mill site.

On the basis of the facts listed above, the Administrator of the Division of Environmental Protection finds that ABC Recycling Industries, LLC is in noncompliance with NRS 519A.260 and NAC 519A.235 for failure to submit the required annual reclamation report and pay the applicable statutory and regulatory fees by the April 15, 2019 deadline.

8-14-2019
Date


Todd Process
Reclamation Branch Supervisor
Bureau of Mining Regulation and Reclamation

Order

The following Order is issued this August 13th, 2019 pursuant to the powers and duties vested in the Administrator of the Division of Environmental Protection (Division) pursuant to Nevada Revised Statutes (NRS) 519A.140 and 519A.150.

On the basis of the Notice of Noncompliance attached hereto and made a part of this Order, the Division has determined that ABC Recycling Industries, LLC is in noncompliance with NRS 519A.260 and Nevada Administrative Code 519A.235.

IT IS HEREBY ORDERED:

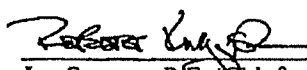
On or before September 13th, 2019, ABC Recycling Industries, LLC must submit the required annual reclamation report and pay the applicable statutory and regulatory fees by September 13th, 2019. Failure to comply with this deadline will result in the Division initiating action to revoke the Lathrop Mill Permit #0171 and to pursue forfeiture of the project reclamation bond. Failure to submit the overdue fees by the above deadline will result in referral of the matter to the State of Nevada, Office of the Controller for further collection efforts.

NAC 519A.400 requires that the Division set a date and time for a hearing and inform the operator that the permit is subject to being revoked and the posted surety forfeited upon completion of the hearing, or if the operator fails to attend the hearing.

Contact Todd Process, Reclamation Supervisor, to set up a hearing date for your attendance in Carson City to make a final determination of your project status.

The Division may withdraw this notice of noncompliance, if the operator demonstrates that the alleged violation has been remedied or has agreed to a corrective plan of action approved by the Division.

14 AUGUST 2019
Date

 FOR J. SAWYER
8/14/2019

Joe Sawyer, P.E., Chief
Bureau of Mining Regulation and Reclamation

LATHROP MILL FACILITY, RP 0171, 08/13/2019 Noncompliance letter

USPS Status:

Tracking History



August 18, 2019

In Transit to Next Facility

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

August 15, 2019, 11:33 pm

Departed USPS Regional Facility

LAS VEGAS NV DISTRIBUTION CENTER

August 15, 2019, 4:10 pm

Arrived at USPS Regional Facility

LAS VEGAS NV DISTRIBUTION CENTER

August 14, 2019, 11:08 pm

Arrived at USPS Regional Facility

RENO NV DISTRIBUTION CENTER

August 14, 2019, 9:51 pm

Accepted at USPS Origin Facility

CARSON CITY, NV 89701

August 14, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

EXHIBIT 3

EXHIBIT 3



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, Governor
Bradley Crouse, Director
Greg Lovato, Administrator

September 16th, 2019

Mr. Robert Ford
ABC Recycling Industries, LLC
2799 E. Tropicana Blvd. Suite H
Las Vegas, Nevada 89121

**Sent Via FedEx and E-mail:
#7762 4091 5798**

RE: Re-issuance of the Notice of Noncompliance and Order – ABC Recycling Industries, LLC – Lathrop Mill: Reclamation Permit # 0171

Dear Mr. Ford:

The enclosed Notice of Noncompliance and Order issued by the Administrator of the Division of Environmental Protection (Division), pursuant to Nevada Revised Statutes (NRS) 519A.140, 519A.150 and 519A.270, requires compliance by ABC Recycling Industries, LLC with the terms and conditions of the Order by the dates specified.

The Notice of Noncompliance and Order was developed as a result of ABC Recycling Industries, LLC failure to submit the required annual reclamation report and to pay the applicable statutory and regulatory fees (\$4166.00) that were due on or before April 15, 2019, per NRS 519A.260 and Nevada Administrative Code 519A.235.

Please be advised that the annual reclamation report and fees must be submitted by October 11th, 2019, or the matter will be referred to the State of Nevada Office of the Controller for further collection efforts and the Division will initiate action to revoke the Lathrop Mill reclamation permit and may subject the posted cash surety amount of \$205,791.00 into forfeiture.

The attached Order is final and not subject to review unless, within ten (10) days from the date of this notice, the State Environmental Commission (SEC) located at 901 S. Stewart Street, Carson City, Nevada 89701, receives a request for a hearing by written petition (SEC Form 3).

If you have any questions concerning this matter, please contact me at (775) 687-9408.

Sincerely,

Todd Process
Reclamation Branch Supervisor
Bureau of Mining Regulation and Reclamation

Ec: Greg Lovato, Deputy Administrator, NDEP
Joe Sawyer, Chief, BMRR
Rick Perdomo, DAG Office
Todd Suessmith, BMRR Reclamation Permit Writer

Notice of Noncompliance

In the matter of ABC Recycling Industries, LLC this Notice of Noncompliance, dated August 13th, 2019 is made on the basis of the following facts, to wit:

1. The State of Nevada, Department of Conservation and Natural Resources, Division of Environmental Protection (Division), under the authority of Nevada Revised Statutes (NRS) 519A.140 and 519A.150, has the duty and power to administer and enforce the provisions of NRS 519A.010 through 519A.280, inclusive, the regulations promulgated by the State Environmental Commission pursuant to NRS 519A.160; a plan for reclamation and any condition placed on a plan for reclamation; to hold hearings and issue orders and to take any other action reasonable and necessary to enable it to administer or enforce the provisions of NRS 519A.010 through 519A.280, inclusive.
2. Per Nevada Administrative Code (NAC) 519A.020 "Active" defined. Active means that operations or actions are being conducted at an exploration project or mining operation, which results in land being affected.
3. Per NRS 519A.040 "Affected" defined. Affected means that the surface of the land is or will be disturbed by mining, or that the land will be used: 1) as an evaporation or settling pond, leach dump, placer area or tailings pond or dump; or 2) in conjunction with any structure, facility, equipment, machine, tool, material or property incident to mining.
4. Per NRS 519A.070 "Exploration Project" defined. Exploration project means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or, in connection with, determining the presence, location, extent, depth or grade of any mineral, which affects the surface. The term does not include a small exploration project.
5. Per NRS 519A.080 "Mining Operation" defined. Mining operation means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, the development or extraction of any mineral. The term does not include an aggregate or sand pit or a small mining operation.
6. Per NRS 519A.090 "Operator" defined. Operator means any person who owns, controls, or manages an exploration or mining operation.
7. Per NRS 519A.260 Annual Submission of reports and payment of fees by operator; disposition of money received. Each operator shall, on or before April 15 of each year, submit to the Administrator a report relating to the status and production of all mining operations and exploration projects in which he has engaged and identifying each acre of land affected and land reclaimed by that mining operation or exploration project through the preceding calendar year, and shall pay to the Division a fee of: (a) one dollar and fifty cents for each acre of public land administered by a federal agency; and (b) five dollars and fifty cents for each acre of privately owned land which has been disturbed by mining operations or exploration projects engaged in by the operator and not reclaimed.

8. Per NAC 519A.235 (1) Annual Submission of fees for services by Division. On or before April 15, 1991, and on or before April 15 of each year thereafter, an operator of an exploration project or mining operation shall submit to the Division for services rendered by the Division the applicable fees required by this section.

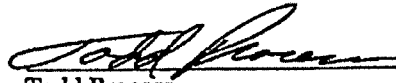
9. The location of the Lathrop Mill is:
Portion of Section 36, Township 17 South, Range 49 East and Portion of Section 1, Township 18 South, Range 49 East; Mount Diablo Baseline and Meridian, Nye County, Nevada

The operator for the Lathrop Mill is ABC Recycling Industries, LLC. (Reclamation Permit #0171).

10. ABC Recycling Industries, LLC has failed to submit the required reclamation report and pay the applicable statutory and regulatory fees for calendar year 2018 that were due on or before April 15, 2019 for the Lathrop Mill site.

On the basis of the facts listed above, the Administrator of the Division of Environmental Protection finds that ABC Recycling Industries, LLC is in noncompliance with NRS 519A.260 and NAC 519A.235 for failure to submit the required annual reclamation report and pay the applicable statutory and regulatory fees by the April 15, 2019 deadline.

9-16-2019
Date


Todd Process
Reclamation Branch Supervisor
Bureau of Mining Regulation and Reclamation

Order

The following Order is issued this September 16th, 2019 pursuant to the powers and duties vested in the Administrator of the Division of Environmental Protection (Division) pursuant to Nevada Revised Statutes (NRS) 519A.140 and 519A.150.

On the basis of the Notice of Noncompliance attached hereto and made a part of this Order, the Division has determined that ABC Recycling Industries, LLC is in noncompliance with NRS 519A.260 and Nevada Administrative Code 519A.235.

IT IS HEREBY ORDERED:

On or before October 11th, 2019, ABC Recycling Industries, LLC, must submit the required annual reclamation report and pay the applicable statutory and regulatory fees. Failure to comply with this deadline will result in the Division initiating action to revoke the Lathrop Mill Permit #0171 and to pursue the forfeiture of the project's reclamation bond. Failure to submit the overdue fees by the above deadline will result in referral of the matter to the State of Nevada, Office of the Controller for further collection efforts.

NAC 519A.400 requires that the Division set a date and time for a hearing and inform the operator of such hearing to determine if reclamation permit #0171 is subject to being revoked and the posted surety forfeited upon completion of the hearing if the operator fails to attend the hearing.

Contact Todd Process, Reclamation Supervisor, @ 775 687-9408 to set up a hearing date for your attendance in Carson City to make a final determination of your project status.

The Division may withdraw this notice of noncompliance, if the operator demonstrates that the alleged violation has been remedied or has agreed to a corrective plan of action approved by the Division.

9/16/19
Date


Joe Sawyer, P.E., Chief
Bureau of Mining Regulation and Reclamation



ABC Recycling Industries LLC / Robert Ford
Lathrop Mill, RP0171: Re-issuance of Noncompliance & Order for failure to pay
2018 reclamation annual fees. 09/16/2019 letter

October 7, 2019

Dear Customer:

The following is the proof-of-delivery for tracking number **776240915798**.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	L.INDSEY	Delivery location:	LAS VEGAS, NV
Service type:	FedEx Priority Overnight	Delivery date:	Sep 17, 2019 10:27
Special Handling:	Deliver Weekday		

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

Shipping Information:

Tracking number:	776240915798	Ship date:	Sep 16, 2019
		Weight:	0.5 lbs/0.2 kg

Recipient:
LAS VEGAS, NV US

Shipper:
Carson city, NV US

Reference
Purchase order number:
Department number

ABC Noncompliance
0674
BMRR

Thank you for choosing FedEx.

NDEP 57
APP0078

EXHIBIT 4

EXHIBIT 4



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

November 21, 2019

Mr. Robert Ford
ABC Recycling Industries, LLC
2799 E. Tropicana Blvd. Suite H
Las Vegas, Nevada 89121

Sent Via FedEx and E-Mail:
7770 4755 8442

**RE: Establishment of a Formal Hearing Date for ABC-Recycling Industries LLC
Lathrop Mill, Reclamation Permit #0171**

Dear Mr. Ford:

The Notice of Noncompliance and Order issued by the Administrator of the Division of Environmental Protection (Division), pursuant to Nevada Revised Statutes (NRS) 519A.140, 519A.150 and 519A.270, requires compliance by ABC Recycling Industries, LLC.

The Notice of Noncompliance and Order was developed as a result of ABC Recycling Industries, LLC failure to submit the required annual reclamation report and to pay the applicable statutory and regulatory fees (\$4166.00), due on or before April 15, 2019, per NRS 519A.260 and Nevada Administrative Code (NAC) 519A.235.

As of the date of this letter, the operator has failed to address the Noncompliance and Order. Per regulation NAC 519A.400, the Division must set a date for a hearing and inform the operator that his or her permit may be suspended or revoked and his or her surety forfeited upon completion of the hearing or if the operator fails to attend the hearing.

This Division letter provides formal notification that a scheduled hearing date is set to be held on January 10, 2020 at 10:00 AM in Carson City, Nevada. The Division's address is located at 901 South Stewart Street, Carson City, Nevada. The Hearing will be held on the third floor of the Division's building in the Humboldt Conference room.

If you have any questions concerning this matter, please contact me at (775) 687-9408.

Sincerely,

Todd Process
Reclamation Branch Supervisor
Bureau of Mining Regulation and Reclamation

Ec: Greg Lovato, Administrator, NDEP
Joe Sawyer, Chief, BMRR
Rick Perdomo, Esq., Deputy Administrator, NDEP
Todd Suessmith, BMRR Reclamation Permit Writer



ABC Recycling Industries / Robert Ford
Lathrop Mill, RP0171: Formal request for noncompliance meeting scheduled 1/10/2020.
11/21/2019 letter

December 2, 2019

Dear Customer:

The following is the proof-of-delivery for tracking number **777047558442**.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	J. VAN WAGONER	Delivery location:	LAS VEGAS, NV
Service type:	FedEx Priority Overnight	Delivery date:	Nov 25, 2019 10:19
Special Handling:	Deliver Weekday		

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Shipping Information:

Tracking number:	777047558442	Ship date:	Nov 22, 2019
		Weight:	0.5 lbs/0.2 kg

Recipient:
LAS VEGAS, NV US

Shipper:
Carson city, NV US

Reference
Purchase order number:
Department number

ABC Noncompliance
0687
BMRR

Thank you for choosing FedEx.

NDER 60
APP0081

EXHIBIT 5

EXHIBIT 5



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

February 6, 2020

ABC Recycling Industries, LLC
Mr. Robert Ford
2799 East Tropicana Blvd. Suite H
Las Vegas, Nevada 89121

**Sent via E-mail, FedEx No.
777674695739 & Certified Mail No.
9171969009350218708474**

**RE: Decision to Revoke the Lathrop Mill Reclamation Permit #0171; and
Forfeit of the Reclamation Surety Cash Deposit**

Dear Mr. Ford,

This letter serves to notify ABC Recycling LLC (ABC) that the Nevada Division of Environmental Protection, Bureau of Mining Regulation and Reclamation (Division) has made a decision to revoke Lathrop Mill Reclamation Permit #0171 and forfeit ABC's cash deposit surety securing reclamation at that site.

Background

The Division issued a Notice of Noncompliance and Order on August 13, 2019. The Notice of Noncompliance and Order stated that ABC failed to pay its annual reclamation permit fee of \$4,166.00 by April 15, 2019 and directed ABC to pay the fee by September 13, 2019. Because ABC did not acknowledge receipt of the Notice of Non-compliance and Order, the Division sent a second Notice of Noncompliance and Order via E-mail and Federal Express, return receipt requested, on September 16, 2019, which required ABC to pay its annual reclamation fee by October 11, 2019. ABC acknowledged receipt of the second Notice of Noncompliance and Order, but did not make its annual permit fee payment.

On November 21, 2019, the Division sent a follow-up letter to ABC by E-mail and Federal Express. The letter notified ABC that the Division had set a hearing date for January 10, 2020 regarding possible suspension or revocation of ABC's reclamation permit and forfeiture of its cash deposit surety deposit. You attended the hearing on behalf of ABC, and Todd Process and I attended on behalf of the Division. During the hearing you discussed ABC's difficulties in complying with permit terms and statutory requirements to reclaim the site and stated that the primary owner of the company was reluctant to put additional money into the property and pay the past due annual reclamation permit fee. At the end of the meeting Mr. Process and I provided you with a final deadline of January 24, 2020 to submit ABC's annual permit fee payment. In addition, we explained to you that failure to pay the annual fee would result in permit revocation and forfeiture of the cash deposit surety held by the Division for site reclamation. As the date of this letter, ABC has not paid its annual permit fee.

Discussion

Mining operators are required to obtain a reclamation permit for the land disturbed as a result of mining operations, agree in writing to be responsible for such reclamation, and post a surety for the cost of reclamation in the event the operator fails to perform as required by the permit.¹ On or before April 15 of each year, a reclamation permittee must submit a report to the Division regarding land disturbance and reclamation activities and pay an annual permit fee.² The Division may revoke an operator's reclamation permit on finding, after notice and hearing, that the permittee violated any provision of NRS 519A.010 to 519A.280, inclusive, or any regulation adopted by the Commission pursuant to 519A.160.³ The Division may also order the forfeiture of the operator's surety upon revoking the operator's permit.⁴ A reclamation permittee's failure to pay its annual permit fee would constitute grounds for permit revocation and surety forfeiture.

As described above, ABC held a reclamation permit for operation of Lathrop Mill and was required to pay an annual permit fee of \$4,166 by April 15, 2019. ABC failed to pay the annual permit fee by that date and subsequent dates identified in the Division's Notices of Non-Compliance and Orders issued on August 13, 2019 and September 13, 2019. The Division notified ABC of and held a hearing on January 10, 2020 regarding ABC's failure to pay its annual reclamation permit fee as required by NRS 519A.260 and NAC 519A.235. At the hearing, ABC indicated that it was reluctant to put additional money into the property and pay the past due annual permit fee, which is not valid justification for its failure to comply with its statutory and regulatory obligations to pay an annual permit fee and reclaim the land after mining is complete.

The Division finds that ABC is in violation NRS 519A.260 and NAC 519A.235, due to its failure to timely pay its annual reclamation permit fee and revokes ABC's permit, effective 10 days from the date of this letter.⁵

The Division also orders the forfeiture of ABC's \$205,791.00 cash deposit in its entirety, effective 10 days from the date of this letter, since the cash deposit is based on the estimated costs for reclamation of the site and ABC has not indicated a willingness or intent to fulfill its obligations to reclaim the site as required by its reclamation permit. To the extent that the \$205,791.00 cash deposit surety is not sufficient to fully reclaim the site, ABC is advised that it may be liable for the additional costs spent to satisfy this statutory and regulatory requirement.

This decision is final and not subject to review unless, within 10 days after the date of such Decision is served, the State Environmental Commission (SEC) located at 901 S. Stewart Street, Suite 4001, Carson City, Nevada 89701-5249, receives a request for a hearing by written petition SEC Form 3.

¹ NRS 519A.200, 519A.210.

² NRS 519A.260, NAC 519A.235.

³ NRS 519A.150(9), NAC 519A.220, NAC 519A.400.

⁴ NAC 519A.390.

⁵ NAC 519A.220 (stating that revocation is effective not later than 30 days after the operator is sent written notice by the Division setting forth the facts and conduct warranting revocation).

If you have any questions concerning this matter, please contact me at (775) 687-9397 or jsawyer@ndep.nv.gov.

Sincerely,



Joe Sawyer, P.E., Chief
Bureau of Mining Regulation and Reclamation

Enclosure: SEC Form 3

Ec: Greg Lovato, Administrator, NDEP
Todd Process, Supervisor, BMRR Reclamation Branch
Rick Perdomo, Esq., Deputy Administrator, NDEP
Todd Suessmith, Permit Writer, BMRR Reclamation Branch
Samantha Thomson, Public Information Officer, NDEP
Val King, SEC
Rich Perry, NDOM
Nye County Board of Commissioners



February 12, 2020

Dear Customer,

ABC Recycling Industries / Robert Ford
Lathrop Mill, RP 0171: Decision to revoke reclamation
permit 0171 and bond forfeiture. 02/06/2020 letter

The following is the proof-of-delivery for tracking number: 777694695739

Delivery Information:

Status:	Delivered	Delivered To:	Receptionist/Front Desk
Signed for by:	J.VAN WAGONER	Delivery Location:	
Service type:	FedEx Priority Overnight		LAS VEGAS, NV,
Special Handling:	Deliver Weekday	Delivery date:	Feb 7, 2020 10:30

Shipping Information:

Tracking number:	777694695739	Ship Date:	Feb 6, 2020
		Weight:	0.6 LB/0.23 KG
Recipient:		Shipper:	
LAS VEGAS, NV, US,		Carson city, NV, US,	

Reference	Lathrop Mill - Revoke Permit
Purchase Order	0696
Department Number	BMRR

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

Thank you for choosing FedEx

NDEP 65
APP0086



February 21, 2020

ABC Recycling Industries / Robert Ford
Lathrop Mill, RP 0171: Decision to revoke reclamation permit 0171 and bond
forfeiture. 02 /06 /2020 letter

Dear j b:

The following is in response to your request for proof of delivery on your item with the tracking number:
9171 9690 0935 0218 7084 74.

Item Details

Status:	We regret to inform you that we were unable to locate any delivery information in our records for your item.
Status Date / Time:	N/A
Location:	N/A
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

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**Prehearing Conference Regarding
Motion for Summary Judgment of Appeal
Hearing Request filed by ABC Recycling
Industries, LLC – Lathrop Mill Reclamation
Permit #0171**

ORDER GRANTING
PREHEARING CONFERENCE
FOR SUMMARY JUDGMENT

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An employee of the State
Environmental Commission

1 BYRON THOMAS, ESQ.
2 NEVADA BAR NO.
3 3275 S Jones Blvd
4 Las Vegas, NV 89146
5 702 747-3103
6 Attorney for Plaintiff

7 **BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION**

8 In the Matter of:

9 ABC RECYCLING LLC'S APPEAL OF NDEP'S
10 FEBRUARY 6, 2020 DECISION TO REVOKE
11 THE LATHROP MILL RECLAMATION
12 PERMIT #0171; AND FORFEIT OF THE
13 RECLAMATION SURETY CASH DEPOSIT

14 **OPPOSITION TO MOTION TO
15 SUMMARY JUDGMENT**

16 **COMES NOW ABC RECYCLING, LLC'S** by and through its attorney of record
17 Law Offices of Byron Thomas and files this Opposition to Motion for Summary Judgment.

18 **POINTS AND AUTHORITIES**

19 The Nevada Department of Environmental Protection (hereinafter the "State" or
20 "NDEP") has filed a motion for summary judgment (hereinafter the "Motion"). The State
21 contends that the it is entitled to summary judgment because ABC Recycling (hereinafter "ABC")
22 has not paid the annual fee for mining. However, this is simply a pretext for the State
23 unreasonably refusing to accept ABC's reclamation plan.

24 **RELEVANT FACTS**

25 The State is using the fee issue as a blatant attempt hide the unreasonable withholding of
26 the approval of ABC's reclamation plan. See the Declaration of Robert Ford attached hereto as
27 Exhibit "A." The State originally set the reclamation bond at \$1,260,000, However the actual
28 reclamation costs are more than triple the bond. It is believed that Hillcrest spent approximately
\$3,400,000 attempting to reclaim the property. ABC Recycling has spent approximately
\$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals.

In addition, there may be the need for even more expenditures on cleanup. There is also a
settling pond of approximately 200 acres located on the property. We believe that this settling

1 pond contains contaminants. At this time no formal estimate has been done, but based on the past
2 contamination costs we estimate that it will take at least \$1,200,000 to clean up.

3 We also cannot forget that American Borate is the cause of all these problems. However,
4 American Borate is not being required to take responsibility for its actions. Instead NDEP is
5 pursuing actions against ABC. The only party that is currently trying to remedy the problem.

6 ABC intends on continuing to reclaim the property. ABC has presented a plan to reclaim
7 the land. See Exhibit B. The plan reasonably proposes to use green waste to reclaim the
8 property. NDEP has unreasonably withholding approval, and this is the real reason behind
9 revocation of the permit. The State has not provided any technical or written reason as to why the
10 reclamation plan is not sufficient.
11

12 ARGUMENT

13 A. The State has Presented a Pretextual Argument to Distract from its Unreasonable 14 Decision to Withhold Approval of ABC's Plan of Reclamation

15 The standard for summary judgment is as follows:

16 When deciding a summary judgment motion, all evidence "must be viewed in a
17 light most favorable to the nonmoving party." Id. General allegations and
18 conclusory statements do not create genuine issues of fact. Id. at 731, 121 P.3d at
1030-31.

19 Barber v. D. 2801 Westwood, Inc., 437 P.3d 1053 (Nev. 2019). "In determining whether
20 summary judgment is proper, the nonmoving party is entitled to have the evidence and all
21 reasonable inferences accepted as true." Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774
22 P.2d 432, 433 (1989); see also Scialabba v. Brandise Const. Co., 112 Nev. 965, 968, 921 P.2d
23 928, 930 (1996) In addition, district court cannot make findings concerning the credibility of
24 witnesses or weight of evidence in order to resolve a motion for summary judgment. Borgerson
25 v. Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001)

26 The State's reason for revoking ABC's permit is simply a pretext to cover for its arbitrary
27 and capricious behavior in unreasonably withholding approval of ABC's plan of reclamation.
28 See SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987)/ ABC has presented a

1 reasonable and valid reclamation plan. Yet, the State continues to unreasonably withheld
2 approval, and it is just using the fee dispute as an excuse. The State states that ABC has not
3 attempted to pay the fees. However, it makes no sense for ABC to pay the fees while the State
4 continues to unreasonably withhold approval of the reclamation plan. ABC would be happy
5 to pay the fees if the State was not acting so arbitrarily.

6 ABC has presented several reclamation plans. The State has not provided a formal written
7 explanation as to why those plans are insufficient. The State has presented no technical or written
8 explanation as to why ABC's reclamation plan is not sufficient.

9
10 B. ABC is entitled to additional time to challenge the Motion for Summary Judgment.

11 However NRCP 56(d), formerly NRCP 56(f) allows a party more time to gather evidence
12 to oppose a summary judgment motion if the party needs additional time to gather evidence to
13 challenge the motion for summary judgment.

14 The Nevada Supreme Court has interpreted Rule 56(f) as follows:

15 NRCP 56(f) permits a district court to grant a continuance when a party opposing a
16 motion for summary judgment is unable to marshal *118 facts in support of its
17 opposition.² A district court's decision to refuse such a continuance is reviewed for
18 abuse of discretion.³ Furthermore, a motion for a continuance under NRCP 56(f)
19 is appropriate only when the movant expresses how further discovery will lead to
20 the creation of a genuine issue of material fact.⁴ In *Halimi v. Blacketer*, this court
21 concluded that a district court had abused its discretion when it denied an NRCP
22 56(f) motion for a continuance and granted summary judgment in a case where the
23 complaint had been filed only a year before summary judgment was granted.⁵ This
24 court noted that summary judgment is improper when a party seeks additional time
25 to conduct discovery to compile facts to oppose the motion.⁶ Furthermore, this
26 court held that when no dilatory motive was shown, it was an abuse of discretion
27 to refuse a request for further discovery at such an early stage in the proceedings.⁷

28 ///

///

///

1 Aviation Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 117–18, 110 P.3d 59, 62 (2005).

2 ABC does not make the request for a dilatory purpose. Rather, the unusual occurrence of a global
3 pandemic has effected the ability of ABC to gather the needed discovery. See the Declaration of
4 Byron Thomas attached as Exhibit “C.” The added time will allow ABC to demonstrate that the
5 State is engaging in a charade and is in reality unreasonably withholding permission of approval.

6 Dated this 24th April of 2020

7
8 **LAW OFFICES OF BYRON THOMAS**

9 /s/ BYRON E. THOMAS

10

BYRON THOMAS

11 Nevada Bar No. 8906

12 3275 S. Jones Blvd. Ste. 104

13 Las Vegas, Nevada 89146

14 byronthomaslaw@gmail.com

15 Phone: (702) 747-3103

16 Attorney for Plaintiffs
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EXHIBIT "A"

BYRON E. THOMAS, ESQ. (NBN 8906)
E-mail: byronthomaslaw@gmail.com
LAW OFFICES OF BYRON THOMAS
3275 S. Jones Blvd, Ste 104
Las Vegas, Nevada 89146
Telephone: 702 747-3103
Attorneys for Defendants

**BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL
COMMISSION**

In the Matter of:

ABC RECYCLING LLCS APPEAL OF NDEP'S
FEBRUARY 6, 2020 DECISION TO REVOKE
THE LATHROP MILL RECLAMATION
PERMIT #0171; AND FORFEIT OF THE
RECLAMATION SURETY CASH DEPOSIT

**DECLARATION OF ROBERT FORD IN
SUPPORT OF OPPOSITION TO MOTION
TO SUMMARY JUDGMENT**

I Robert Ford am over the age of 18, and I am competent to make this declaration (the "Declaration"). I make this Declaration based on personal knowledge.

I am the managing member of ABC Recycling, LLC. I have reviewed the Motion for Summary Judgment and the Opposition to the Motion to Summary Judgment. Because of my position as managing member I have personal knowledge of the documents attached as Exhibits to the Opposition. The documents were created at near the time of the event and they were created in the ordinary course of business.

The State is using the fee issue as a blatant attempt hide the unreasonable withholding the approval of ABC's reclamation plan. The State originally set the reclamation bond at \$1,260,000, However the actual reclamation costs is more than triple the bond. It is believed that Hillcrest spent approximately \$3,400,000 attempting to

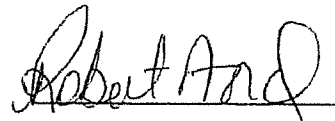
reclaim the property. ABC Recycling has spent approximately \$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals.

In addition, there may be the need for even more expenditures on cleanup. There is also a settling pond of approximately 200 acres located on the property. We believe that this settling pond contains contaminants. At this time no formal estimate has been done, but based on the past contamination costs we estimate that it will take at least \$1,200,000 to clean up.

We also cannot forget that American Borate is the cause of all these problems. However, American Borate is not being required to take responsibility for its actions. Instead NDEP is pursuing actions against ABC. The only party that is currently trying to remedy the problem.

ABC intends on continuing to reclaim the property. ABC has presented a plan to reclaim the land. See Exhibit B. The plan reasonably proposes to use green waste to reclaim the property. NDEP has unreasonably withholding approval, and this is the real reason behind revocation of the permit. The State has not provided any technical or written reason as to why the reclamation plan is not sufficient.

Executed on this 24 day of April 2020



ROBERT FORD

EXHIBIT "B"

Lathrop Mill Remediation Facility

Address:

1995 Diaz Road
Amargosa Valley, NV 8920

Contact: Robert Ford
(702) 715-4347

Project Location:

Portion of Section 36, Township 17
South, Range 49 East and Portion of
Section 1, Township 18 South, Range 49
East: Mount Diablo Baseline &
Meridian, Nye County, Nevada

APN#s: 019-421-05
019-421-09
019-381-26

Project Description

Lathrop Mill Remediation Facility will receive approximately 100,000 cubic yards(cy)/year including:

- 25,000 cy green waste (for improving organic matter content and microbiology of soil)
- 15,000 cy clean dimensional lumber (for improving organic matter content of soil)
- 25,000 cy manure (for improving nutrient balance, organic matter content and microbiology of soil)
- 35,000 cy sheetrock (for gypsum to lower pH and reduce salinity)

Material will be ground, screened, and land applied at agronomic rates suitable for remediating and revegetating the site. It will not require composting. Agronomic rates will be determined and adjusted through lab analysis and results of test plots and growth trials. Material received will not be composted nor sold, and is entirely for remediating the soil and revegetating the site. Received volumes may be adjusted as necessary to achieve the most appropriate agronomic rate.

Equipment utilized:

- CAT 988 B loader
- Case 570 XLT loader
- CAT 235 excavator with thumb
- Protogrind 1200 horizontal grinder
- Ford water truck
- Trommel screen
- Tractor with disc

The facility will employ one manager, one heavy equipment operator, one truck operator and one laborer.

Monitoring, sampling and testing programs will be implemented to ensure all products meet specifications for remediating and revegetating the property.

Provisions for fire prevention and control:

Unprocessed and ground yard trimmings in storage at the receiving area will be kept in piles less than 25' in height prior to grinding.

Piles will be inspected for signs of combustion and excessively high temperatures. In case of smoke, smoldering, or fire, depending on the intensity, the operator may use the FEL to break apart the pile and douse with the water truck.

Fire extinguishers will be available for employees to use on equipment. If a fire at the facility grows beyond incipient stage, 911 will be called for assistance.

Fire lanes (buffers) around the perimeter of piles will be kept clear of flammable or combustible material or vegetation and maintained for adequate emergency vehicle access.

Provisions for odor prevention and control:

Odors will be prevented by ensuring feedstock is kept aerobic, ground and applied at agronomic rates.

Provisions for the control of runoff and runoff:

Berms will be built around active receiving areas to prevent runoff and runoff. Materials received will not have a high moisture content and the arid climate will prevent excess accumulation of standing water. In the unlikely case water pools or ponds as a result of active substrate or extreme rain events, it can be pumped back onto dryer materials to absorb it.

Provisions for litter prevention and control:

Incoming material will be confined to as small an area as practicable. Physical contaminants will be removed by hand stored in a sealed container. The facility will be inspected and cleaned to collect any scattered lightweight debris.

Contingency plan to be taken in the event of unforeseen circumstances that may occur at the facility. The plan provides for an organized and coordinated course of action to be taken, and addresses:

(1) A fire at the facility:

Operator will use its own fire extinguishers and water truck to manage the fire. The fire department will be called if control is not possible.

(2) A release of hazardous or toxic materials:

Operator will isolate and contain materials, and arrange for proper disposal. If release cannot be contained the Nye County Southern Hazmat Team will be contacted.

(3) Facility shutdown for any reason:

Operator will stop receiving feedstock materials, ensure all materials onsite are in proper piles and not odorous or on fire, and site will be secured by fences and berms.

Provisions for proper disposal of by-products:

Operator will have 40-cubic yard roll-off boxes onsite and will remove any contaminants for proper disposal.

Project Team:

Rich Flammer, Project Manager, organic materials expert, Hidden Resources
Wayne Williams, Ph.D., Plant Pathologist/Agricultural Advisor, Hidden Resources
Garn Wallace, Ph.D., Soil Scientist, Wallace Laboratories

•Proposed ABC Recycling Industries Re-veg plan

ABC Recycling Industries Re-veg Plan

1995 Diaz Drive, Amargosa, NV

- Property owner/Applicant: Robert Ford, ABC Recycling Industries
- Site History: Reclaimed Borate and clay mine under Bureau of Mine Reclamation, NDEP

Re-veg PlanFacts:

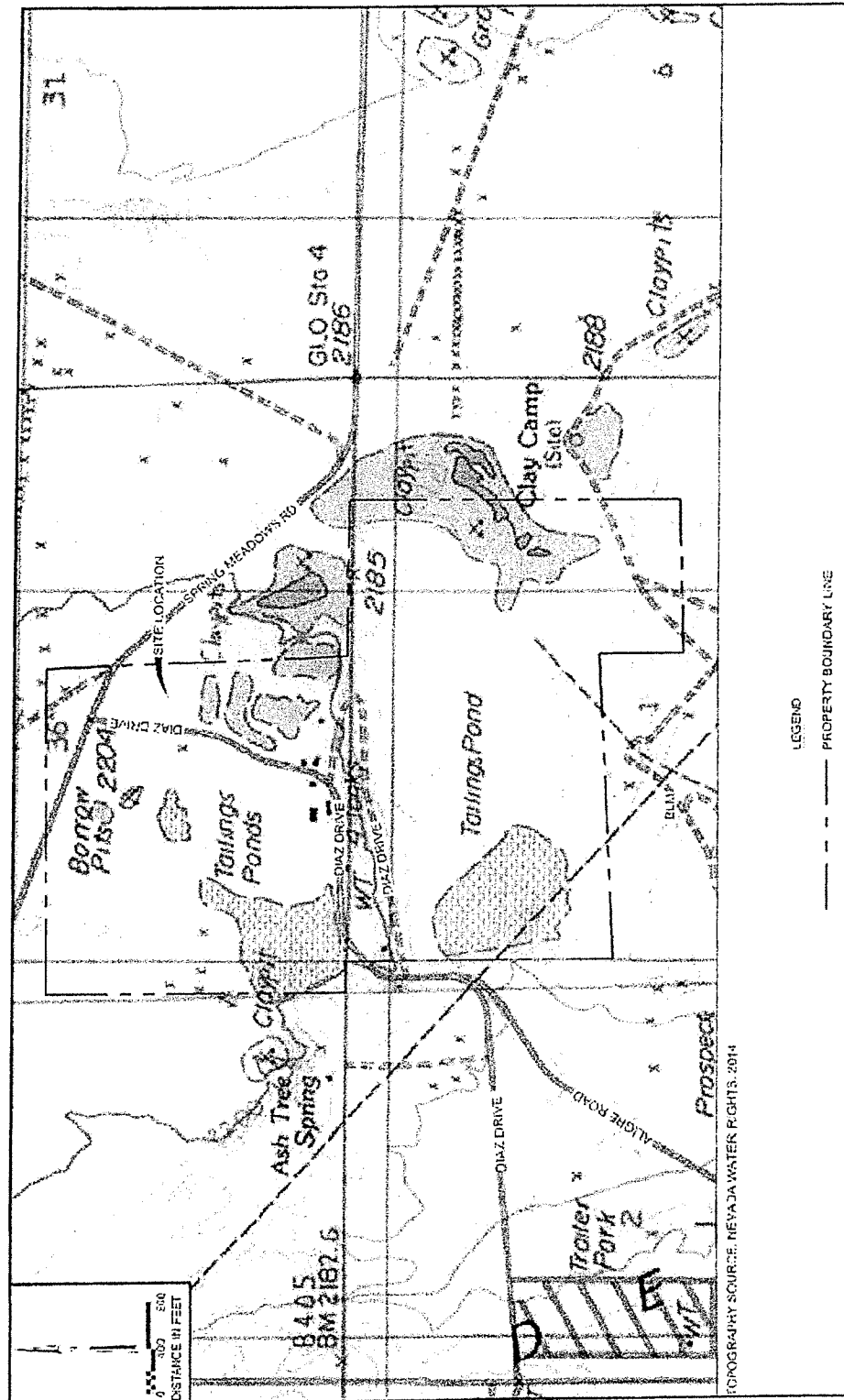
- 372 Acres Total Site.
- 206 Acres Proposed Class III Landfill (Over Mine-Tailing Pond areas).
- 166 Acres setbacks - 100' from Property Line, stormwater ponds, Borrow Pits.
- Phase I Landfill/South Area - 3' high and to positive 1% drainage.
- Phase II Landfill/North Area - 3' high and to positive 1% drainage.
- Approximately 1.5 million cubic yards capacity or about 10 years of life.
- 12 to 20 Trucks per day.
- Borate mine tailings ponds have contaminated local groundwater with arsenic, acids, sulfates, and chloride.
- Landfill will reclaim mine area and assure groundwater monitoring and containment.

REVEG- SITE

Required Control Plans For Re-veg Operation:

- REVEG –PLAN
 - Screening at Gate, Customers, testing, spotters at dump area.
- Operating Plan
 - Training
 - Fire Control
 - Allowable Materials
- Recycling Plan
 - Green waste/Compost
 - Vector Control
 - Engineering And Safety Plans
 - Dust, noise, and odor controls

Location Map





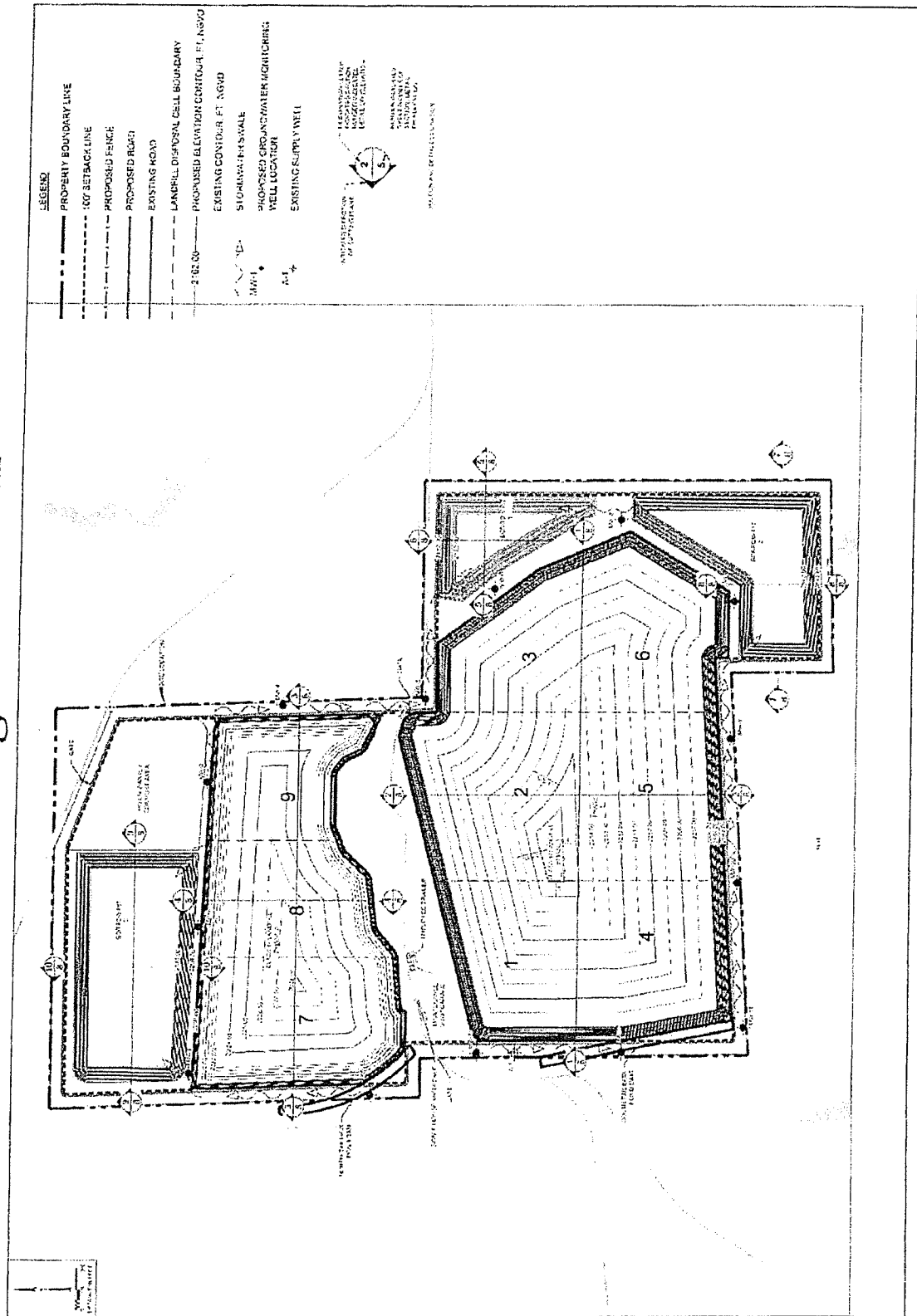
Environmental Screening

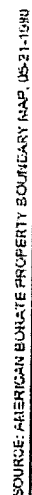
- Soil samples collected at aboveground storage tank (AST) and tailings ponds.
- Four samples collected at AST location. All showed diesel range organics and total petroleum hydrocarbons in excess of 50,000 mg/kg.
- Nineteen samples collected in tailings ponds. All showed elevated levels of arsenic and other metals.
- A Phase II Environmental Site Assessment (ESA) is recommended for the site.

Permit 0171 Acceptable Materials

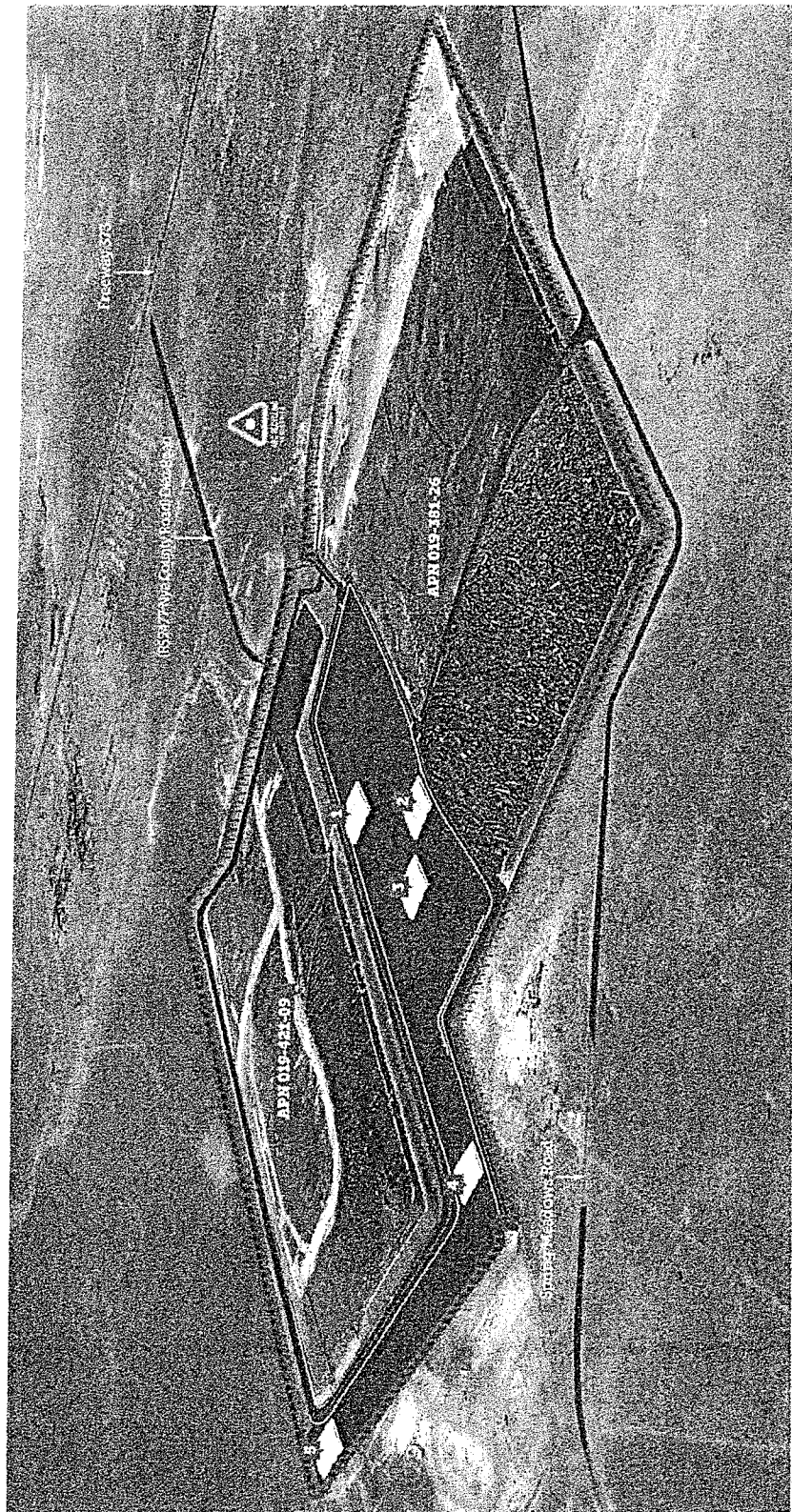
- Grinded Construction and Demolition woods materialsin which will help in soil enhancement .
- Cow manure
- Shredded papers pulp /wall board
- Organics/in-organics
- Trees , stumps , plam trees / grinding
- Grass clipping
- Wood chips /grinding
- Gypsum materials
- Perite , zeolites
- Green Waste materials

Reveg Site Plan





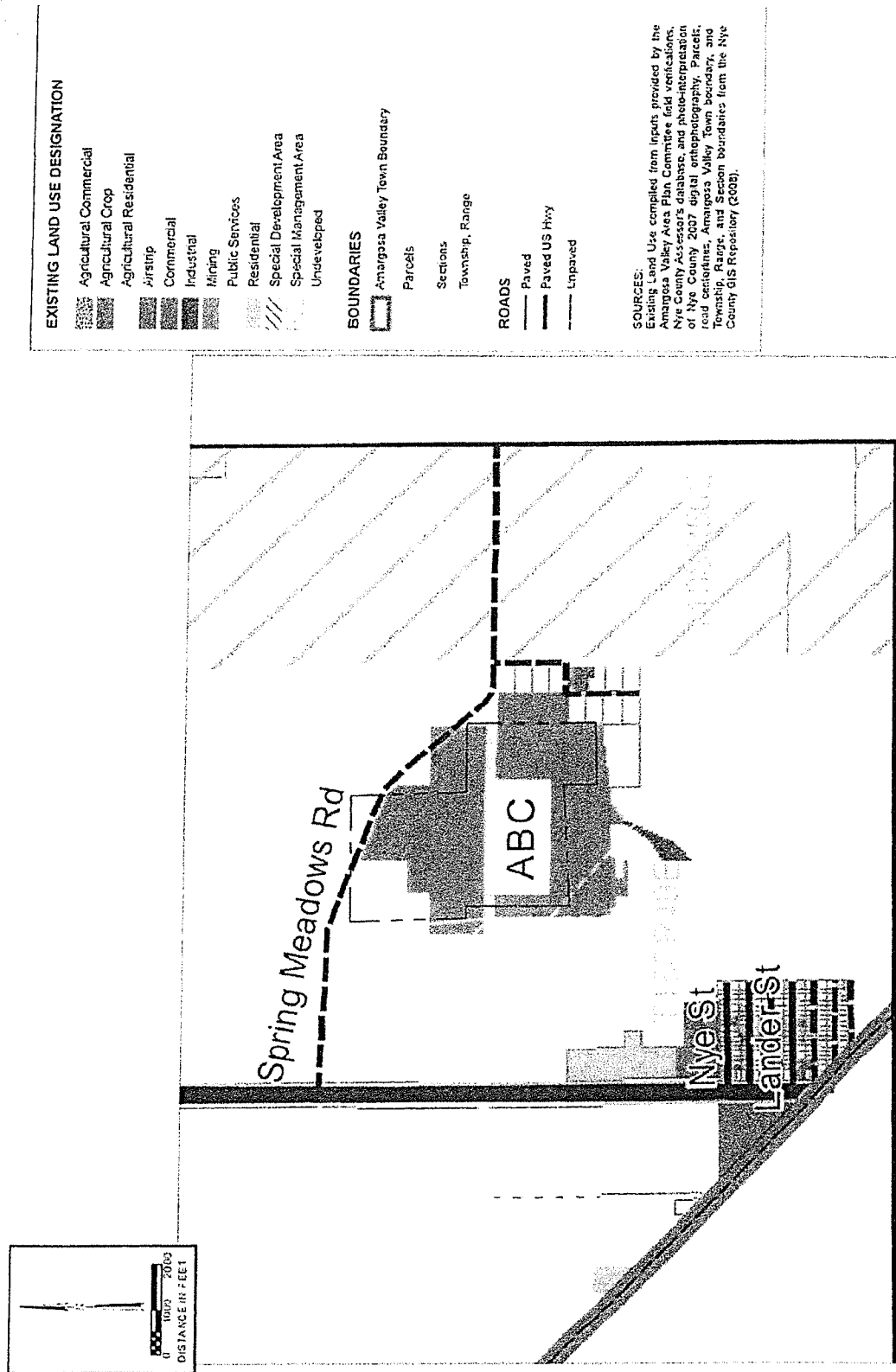
Re-veg site



Amargosa Valley Area (AVA) Plan

- Current land use for ABC site is “mining.”
- The site is not shown as a contaminant source to public water supply systems in the AVA Plan.
- Future land use of ABC site is “Rural Industrial” or RUI.
- The Project is consistent with the AVA Plan.

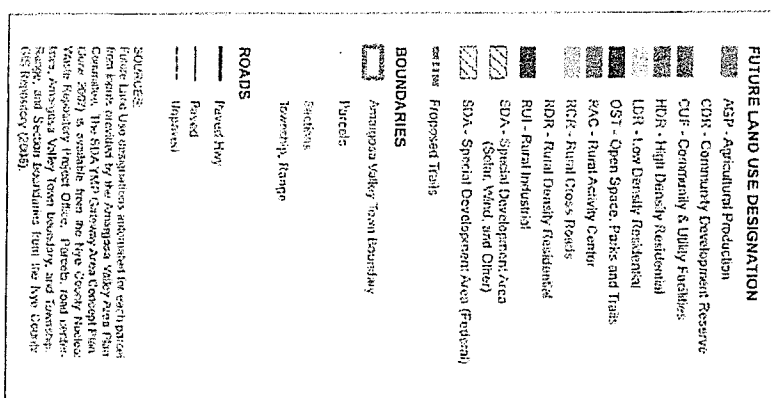
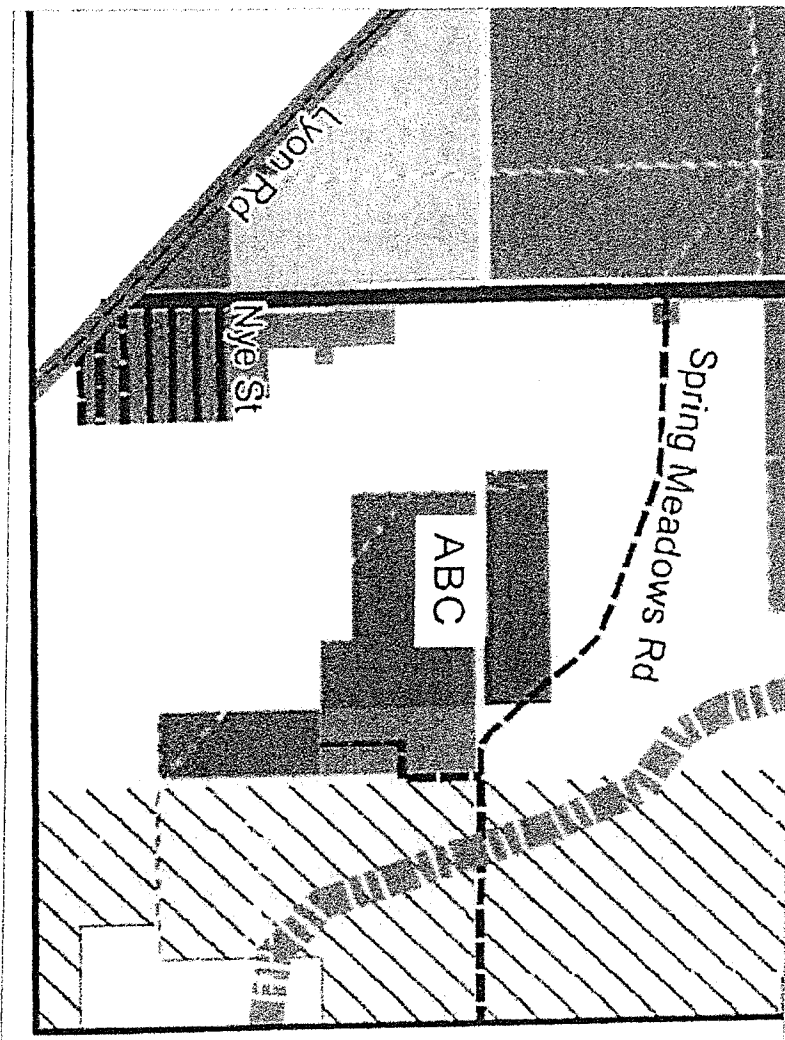
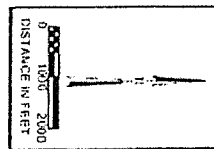
Current Land Use



Anargosa Valley Area Plan

- RUI Purpose: "...develop businesses serving mining, or mining related activities."
- Objective: "Establish land for Industrial Development ... mining related and green industries that will provide expanded economic opportunities for the community without impairment to the limited natural resource, particularly water."
- Proposed ABC recycling facility meets the purpose and objective of the AVA Plan's RUI land use:
 - Reclaims a mine
 - Green Industry- Compost/Recycling
 - Insignificant water use
 - Provides Jobs

Future Land Use



All materials to be tested and
inspected by 3rd party
Consultant

*Law Offices of
Steven G. Gibbs*

Telephone: 661-633-1144

Facsimile: 661-633-1640
E-mail: jawegibbs@pacbell.net

September 21, 2012

VIA EMAIL & U.S. MAIL

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
901 South Stewart Street, Suite 401
Carson City, Nevada 89701

RE: additional clarifications and bond reduction request

Dear Mr. Holmgren:

I have been reviewing the emails between the meeting of Mining reclamation and waste management, which occurred in the latter part of August, 2012, and I wanted to cover a few issues concerning the 223 acres of boron ponds that have already been filled with dirt at the site. The site still has a few remaining sinkholes and the settlement around them appears throughout the site, after reviewing the HS a golden letter concerning lightweight issues of materials. Further, the heavy fill material causes the wet tailing to move more than it would in light tailing, whereas the light tailing would not cause any movement in the near future. My client proposes not to use the tire mulch as per previous in NDEP instructions, but instead would use a lightweight mix of wood waste, green waste, cardboard, plastic, and inner compounds, with a mix of the borrow materials from the 80 acres already on site. The borrow area material will be mixed with the mulch so as to utilize some of the on-site clay material to hold down airborne particulate matter, with the lightweight soil amendments so as to finally cover the entire site. This product will cut down on the blowing boron materials on-site as well as off-site.

The 223 acres have a 2 foot clay liner already installed. The clay liner prevents the heavy materials from getting into the water table. The NDEP directive on April 2, 2012 was satisfied on all the pond test and liner information related to the heavy materials/metals and water table issues. This existing material on the ponds has been approved to be capped and in place by NDP without any further investigations as per 04-02-2012 NDEP letter (see attached). The current tests at the site show that some

Mr. Bruce Holmgren, Bureau Chief
 NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
 Bureau of Mining Regulation and Reclamation
 September 21, 2012
 Page 2

high metal limits in the Anderson-Egan report (according to Silver State Lab) show that it will take the use of soil amendments, which will consist of a mixture of gypsum board, wood, tree branches, plastic, cardboard, landscape, cuttings, and green waste mixed with the on-site borrow material from private land to enhance the growth of plant life. The soil amendments will be tested prior to any implementation by Silver State analytical laboratories located in Las Vegas (3638 Sunset Rd., Suite 100, Las Vegas, NV 89120.) Todd Suesmith has already told my client that no analytical lab test were required for the soils pursuant to the attached email sent on April 2, 2012.

Concerning the actual mill hill site, it will be left in place for future industrial use. The pond area is the only part of the property that would be mixed with lightweight material and with the soil amendments as related above. This method will allow my client, Robert Ford to eliminate dust, as well as cover the sinkholes. The bond reduction is attached for areas and parts of storage yards that are not needed on the bond. The bond reduction is attached for \$157,216 along with the map of borrow source areas to be utilized to mix with the lightweight soil amendments.

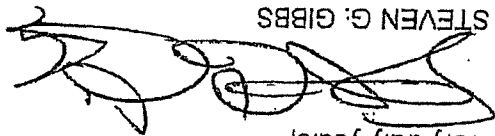
My client will still submit the modification into waste management and be able to transfer the existing permit to a class III landfill permit as discussed. The amount of the small class III landfill bond will not exceed the fill area depth of 1 foot of materials that will be required to cover the boron materials, thereby allowing growth. The Silver State Lab research from the chemical tests taken in 2007 relayed that the heavy metals were so high that it would not allow growth of any plants are natural desert weeds without substantial amendment. The current clay liners that are in place and the existing dam should be already engineered for the 1 foot of light materials to be installed.

My client and I would like to greatly thank all of you at NDP who have been involved with all of your help on the project to date. My client still needs a few clarifications to avoid any issues from spending the wrong amounts of funds by producing the improper mulches and soils for the reclamation, which would not be acceptable from NDP. To that end, my client wants to know whether or not he needs to get a permit to install the soil amendments and process on-site after the Silver State test to ensure that there is no contamination in materials under the active permit 0171 (which states that no tires can be included). The materials will be hauled on-site and tested monthly before installation in the sinkholes and the uncovered ponds on site only. The balance of the 223 acres will not be receded at this time until class III landfill modification is completed and new bond posted. After obtaining this class III landfill permit, there is no further requirement concerning the Mining Department and the balance of the seeding will be dismissed and complete bond refunded upon completion of the new class III permit.

Mr. Bruce Holmgren, Bureau Chief
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Mining Regulation and Reclamation
September 21, 2012
Page 3

This is our understanding. Hopefully with the last clarifications, My client will be able to
finalize the existing work and remove the daily water costs from the site.
Should you have any additional questions or need for further documentation,
please feel free to contact me.

Very truly yours,


STEVEN G. GIBBS

SGG/kmh
cc: Mr. Robert Ford

STATE OF NEVADA
Department of Conservation & Natural Resources
Brian Sandoval, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**



July 13, 2017

Robert Ford
ABC Recycling Industries, LLC
4475 South Pecos Road
Las Vegas, NV 89121

Re: Lathrop Mill Composting Facility SW1773
Application Completeness Review Comments

Dear Mr. Ford:

The Nevada Division of Environmental Protection (Division) – Bureau of Waste Management (BWM) is in receipt, on July 10, 2015, of the application for a Composting Facility to be located at the Lathrop Mill Site. Please note that this facility has been assigned number SW1787.

The application has been reviewed for completeness and the following comment was noted:

The BWM requires that all local approvals must be obtained in order for an application to be considered complete. Until such time that documentation verifying all local government approvals have been granted, the Lathrop Mill Composting Facility application will be considered incomplete and the technical review may not begin.

Please provide the information requested above. If you have any questions you may contact me at (775) 687-9477 or PEckert@ndep.nv.gov.

Sincerely,

Paul Eckert, P.E.

Staff Professional Engineer

Permitting Branch

Bureau of Waste Management

PE:dl

cc:

Eric Noack, Chief, BWM
Mike Leigh, P.E., Supervisor, Permitting Branch, BWM
Mike Ruffner, Solid Waste Inspector, BWM

Paul Eckert, P.E., Permitting Branch, BWM

Darrel Lacy, Director, Nye County Planning lacy@co.nye.nv.us

Robert Ford, ABC Recycling Industries, LLC lonagalel@ht-speed.us

File: 1787_Peckert_07132017_13_SW_Lathrop Mill Compost_Application Review

901 S. Stewart Street, Suite 4001 • Carson City, Nevada 89701 • P: 775.687.4670 • F: 775.687.5856 • ndep.nv.gov

(printed courtesy of ndep)

NDEP 100

NDEP 101

Trip Report February 6 - Nye County Sean Brown February 7, 2020

1	Meeting with Nye County Planning Department
1	Avoiding the Solid Waste Application Process
1	Their Main Concern: Trash Mitigation
2	Nye County Business License Not Required - Check with Amargosa Valley
2	NDEP Inspections Suffice
2	Permits
2	Ron Murphy's Gravel Operation
2	MOU and Permit Package
3	Post-Meeting Activity
3	Steve Sotomeyer
3	Ron Murphy
3	HSA Golden Case
3	James Wilson
4	David Bell
4	Paused on Internet and Security Systems
4	Searchlight Sales
4	Return Home

Nye County Planning Department
250 NV-160 #1, Pahrump, NV 89060
Steve Osborne, Principal Planner
775-751-4246

Meeting with Nye County Planning Department

Robert and I met at the South Point then headed to Kinkos at 7:30 am. Robert printed out some documents we needed and we drove his truck to the Nye County Planning Department in Pahrump. On the way we discussed what our objectives were, which was to get them to approve our plan in our NDEP 0171 Permit and not have to go through the process of applying for a landfill or other solid waste operation.

At 9 am we met with Principal Planner Steve Osborne. Steve brought with him the Planning Director, Brett Waggoner, and an field technician named Cody.

Avoiding the Solid Waste Application Process

We started off by making clear that this had nothing to do with the previous application to be a landfill. Brett Waggoner did not realize this, and his realization opened him up to listen to what we had to say. We pointed out that what we were doing was REMEDIATING the contaminated soil through the composting process, and that all of the end product was an integral part of the repaired soil. It would not be sold, and it would not be received as solid waste to be stored, but as raw materials to create our own fertilizer on site. We said that this

was a much more affordable way for us to remediate the soil that NDEP expects us, rather than paying for expensive fertilizer and soil amendments to be trucked in. This went well with them, after we discussed the composting process at length they had a very good idea of what we were wanting to do and they began to work with us to address their concerns.

The three of them discussed openly what they thought, mostly discussing whether or not they thought we fit in the "landfill / private disposal / storage" operation and have to go through that process. It wasn't hard for them to all agree that we were operating within the NDEP permit and that they would prefer to be as hands off on this as possible.

Their Main Concern: Trash Mitigation

That left them with their main concern, which was the potential for the site to turn into a trash heap "like Steve Sotomeyer's property." They described how Sotomeyer had a written agreement that he would only bring green waste out to the property and that there would be no other type of solid waste mixed in. Apparently Sotomeyer was very lax about what was dumped out there Brett and Cody say that there is a lot of trash out there now, some of it blowing around, some of it large pipes and old PVC. Robert said that he knew Sotomeyer and Brett suggested that we work out a deal to take the green waste piled on Sotomeyer's property and use it for some of the feedstock on Robert's property. Brett then told us to warn Sotomeyer that the only reason he has not been cited by Nye County is due to manpower issues, but it's only a matter of time, so he needs to address it.

Nye County Business License Not Required - Check with Amargosa Valley

We discussed our ability to be paid tipping fees for the feedstock. They said that Nye County would not require a Business License, but that the town of Amargosa Valley might. We said that we would check with Amargosa Valley on this.

NDEP Inspections Sufficient

The question of inspections came up. Robert said NDEP would be inspecting a couple of times a year. They said that if NDEP was inspecting and we could provide a record of compliance, they would not need to regularly inspect the site.

Permits

They said we need to make sure we have a Processing Permit and a Surface Area Disturbance Permit, which are supposedly included in the NDEP 0171 Permit process.

Ron Murphy's Gravel Operation

We discussed Ron Murphy pulling gravel off of the property and this was a concern for Cody. He said we would need to cross reference the PRPD and it might require a Conditional Use Permit or Special Use Permit. If Ron Murphy is going to sell gravel out of there and not just move it around the property, there will need to be permits. Robert said we would talk to Ron Murphy immediately. (We met him in person afterward, see below.)

MOU and Permit Package

Brett wants us to prepare a Memorandum of Understanding between ABC Recycling and Nye County. He referred to this unofficially as a "Justification Letter." This MOU would spell out exactly what we want to do, how we plan to prevent trash from being dumped, and how we'll dispose of the trash that we pick out of the

feedstock. They really want to be sure we address what we will do if there is a problem, if the project goes away and there's trash on the site. Who will be responsible and how quickly that will be addressed needs to be in there.

Brett told us to gather all of our permits, including the NDEP 0171 and the permits for Ron Murphy pulling gravel out of there, and submit them with the MOU to Steve Osborne. In the meantime, we should talk to Steve Sotomeyer and Ron Murphy and check with the town of Amargosa Valley.

EXHIBIT "C"

BYRON THOMAS, ESQ.
NEVADA BAR NO. 8906
3275 S Jones Blvd
Las Vegas, NV 89146
702 747-3103
Attorney for Plaintiff

BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION

In the Matter of:

ABC RECYCLING LLC'S APPEAL OF NDEP'S
FEBRUARY 6, 2020 DECISION TO REVOKE
THE LATHROP MILL RECLAMATION
PERMIT #0171; AND FORFEIT OF THE
RECLAMATION SURETY CASH DEPOSIT

DECLARATION OF BYRON THOMAS

I Byron E. Thomas am over the age of eighteen and I am competent to make this
declaration. I make this declaration based on personal knowledge.

I am the attorney for ABC Recycling. I have reviewed the Nevada Department of
Environmental Protection (the "State") motion for summary judgment.

The motion for summary judgment contains the pretextual argument that ABC's permit
is being revoked because of non-payment of fees. However, the real reason is the States
unreasonable withholding of approval of ABC's reclamation plan. Therefore, I need additional
time to oppose the Motion.

My client needs additional time to gather affidavits, depositions, and written discovery
to oppose this motion for summary judgment. There is a global pandemic that is affecting my
ability to communicate with clients and to gather information needed to challenge the States
motion for summary judgment.

Some of the information that ABC needs is located in Canada and electronic
communication has proved unreliable. In addition, I am abiding by the governors shelter in
place orders and I am conducting business from home. Unfortunately I am not the only one and
my internet connection has proved unreliable.

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The discovery will show that the State has been unreasonably withholding approval of

the reclamation plan of ABC and that the revocation of the permit was just a pretext that allows

the State to continue to withhold approval of the reclamation plan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of April 2020

Byron Thomas, Esq.

1 AARON D. FORD
Attorney General
2 DANIEL P. NUBEL (Bar No. 13553)
Deputy Attorney General
3 Office of the Attorney General
100 North Carson Street
4 Carson City, Nevada 89701-4717
T: (775) 684-1225
5 E: dnubel@ag.nv.gov

6 *Attorneys for Nevada Division of*
7 *Environmental Protection*

8 **BEFORE THE STATE OF NEVADA**
9 **STATE ENVIRONMENTAL COMMISSION**

10 In the Matter of:

11 ABC RECYCLING LLC'S APPEAL OF
NDEP'S FEBRUARY 6, 2020 DECISION
12 TO REVOKE THE LATHROP MILL
RECLAMATION PERMIT #0171; AND
13 FORFEIT OF THE RECLAMATION
SURETY CASH DEPOSIT
14

**NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION'S REPLY IN
SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

15 The Nevada Division of Environmental Protection ("NDEP"), by and through legal
16 counsel, hereby files its Reply in Support of its Motion for Summary Judgment on
17 ABC Recycling LLC's ("ABC") Appeal. This Reply is based on the attached Memorandum
18 of Points and Authorities and all pleadings on file, the exhibits attached hereto, as well as
19 all oral arguments the State Environmental Commission ("SEC") will hear on this matter.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 ABC's Opposition fails to address the points raised in NDEP's Motion for Summary
23 Judgment and instead makes arguments that are irrelevant to the question here—
24 whether NDEP's decision to revoke ABC's Permit for its admitted failure to pay its
25 statutorily required annual fee constitutes a "clear error of law." Ultimately, summary
26 judgment is appropriate here because there is no dispute regarding the decisive material
27 fact in this case. ABC did not pay its statutorily required annual fee despite NDEP's
28 repeated opportunities to regain compliance. In fact, the Opposition admits this critical

1 fact. See the Opposition at 3 ("it makes no sense for ABC to pay the fees while the State
2 continues to unreasonably without hold approval of the reclamation plan").

3 ABC's Opposition does not even dispute that NDEP has the authority to revoke a
4 permit for failure to pay an annual fee. See NRS 519A.150(9). Instead, ABC's Opposition
5 seems to contend that the appeal is based on NDEP's alleged "unreasonable withholding
6 approval" of ABC's apparent reclamation plan. But, there are three major problems with
7 ABC's argument here: (1) ABC has never submitted a revised reclamation plan for
8 NDEP's review and approval; (2) even taking ABC's false claim as true, ABC withholding
9 its statutorily required annual fee is not a remedy authorized by statute or regulation
10 and; (3) a ruling in ABC's favor would be devastating to NDEP's mission of protecting
11 public health and the environment because it would encourage permit holders to withhold
12 payment of annual fees whenever they disagree with NDEP's decision.

13 Given that ABC admits it failed to pay its mandatory annual permit fee, and that
14 NDEP has the legal authority to revoke a permit based on nonpayment of this fee, the
15 SEC should enter summary judgment in NDEP's favor here.

16 II. RELEVANT FACTS

17 Although the factual history of ABC's Permit is stated within NDEP's Motion to
18 Dismiss, there is an additional detail worth adding here in light of the arguments
19 asserted in ABC's Opposition. ABC's arguments now revolve around NDEP allegedly
20 withholding approval of an apparent reclamation plan. See Opposition at 2. However,
21 **ABC has never submitted a revised reclamation plan to NDEP for review and**
22 **approval.** See the Declaration of Todd Process, attached as Exhibit 1 at 1. NDEP has
23 requested a revised reclamation plan from ABC in the past, but ABC never submitted one
24 because it did not want to pay the required fee to revise the plan (\$4,166). *Id.* at 1-2.

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1 **III. LEGAL ANALYSIS**

2 **A. The SEC should grant summary judgment in NDEP's favor because**
3 **ABC admits it did not pay its statutorily required annual fee, and**
4 **NDEP acted within its authority in revoking ABC's permit based on**
5 **the nonpayment of this fee**

6 Summary judgment is appropriate when “no genuine issue of material fact exists,
7 and the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*,
8 121 Nev. 724, 729 (2005). A factual dispute is genuine when the evidence is such that a
9 rational trier of fact could return a verdict for the nonmoving party. *Id.* While the
10 pleadings and proof must be construed in a light most favorable to the nonmoving party,
11 that party bears the burden to “do more than simply show there is some metaphysical
12 doubt” as to the operative facts in order to avoid summary judgment being entered in the
13 moving party's favor. *Id.* at 732.

14 The Commission should grant summary judgment in favor of NDEP because ABC
15 cannot show that NDEP committed a clear error of law in revoking its permit given the
16 admitted fact that ABC did not pay its annual permit fee. NDEP has the legal authority
17 to revoke a permit for the failure of an operator to pay its required annual permit fee by
18 April 15. See NRS 519A.150(9) (granting NDEP authority to revoke for violation of a
19 statute or a regulation adopted by the Commission), NRS 519A.260 (requiring a mine
20 operator to pay an annual reclamation permit fee by April 15), NAC 519A.235 and
21 519A.240 (requiring a mine operator to pay an annual fee by April 15) and NAC 519A.390
22 (stating that a surety filed with NDEP is subject to forfeiture upon revocation of a
23 permit). ABC did not pay its annual permit fee on April 15, 2019, and ABC's Opposition
24 admits this fact. NDEP gave ABC multiple deadlines after April 15, 2019, to pay the
25 annual fee, but ABC still refused to comply. Based on ABC's failure to comply with
26 statute and regulation, NDEP justifiably utilized its power under NRS 519A.150(9) to
27 revoke ABC's Permit.

28 ABC's Opposition ignores ABC's failure to pay its fee and NDEP's statutorily
29 supported basis for revoking ABC's permit. Instead, the Opposition argues that ABC's

1 appeal has merit because of NDEP "unreasonably withholding approval" of an apparent
2 reclamation plan. As detailed above, ABC never submitted a revised reclamation plan to
3 NDEP. *See* Exhibit 1 at 1. But, even if you accept ABC's false claim as true, it would not
4 serve as any basis to deny NDEP's Motion. If ABC felt that NDEP had unreasonably
5 rejected a revised reclamation plan, its remedy would have been to appeal to the SEC
6 within 10 days of that decision. *See* NRS 445B.360. But no statute or regulation allows
7 ABC to instead refuse to pay its required permit fees because it feels it has been wronged.
8 Such a decision in ABC's favor would encourage permittees to decline to pay required fees
9 when they disagree with a decision by NDEP, rather than going through the statutorily
10 established appeals process. This would be disastrous to NDEP's mission, because 100%
11 NDEP's Bureau of Mining Regulation and Reclamation's costs and expenses are paid for
12 by industry fees such as the one here.

13 **B. ABC's request for additional time under NRCP 56(d) is**
14 **inappropriate because it would not lead to the creation of a genuine**
15 **issue of material fact**

16 ABC's Opposition requests that it be given more time to oppose summary judgment
17 under Nevada Rule of Civil Procedure 56(d). That rule states that a court may allow
18 additional time to obtain discovery when the nonmovant shows by affidavit or declaration
19 that it cannot present facts essential to justify its opposition. But, as stated in the case
20 law cited by ABC in its Opposition, "a motion for continuance under [NRCP 56(d)] is
21 appropriate only when the movant expresses how further discovery will lead to the
22 creation of a genuine issue of material fact." *Aviation Ventures, Inc. v. Joan Morris, Inc.*,
23 121 Nev. 113, 117–118 (2005). ABC is not entitled to any additional time in this instance
24 because it cannot show that further time would lead to the creation of a genuine issue of
25 material fact. The only material fact in this case is ABC's failure to pay its statutorily
26 required annual fee. ABC's Opposition admits that it did not pay the fee. *See* the
27 Opposition at 3 ("it makes no sense for ABC to pay the fees while the State continues to
28 unreasonably without hold approval of the reclamation plan"). No amount of time will

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1 change this uncontested fact. For this reason, it would be inappropriate to grant ABC
2 additional time to respond under NRCP 56(d).

3 **IV. CONCLUSION**

4 For these reasons, the Commission should uphold NDEP's February 6, 2020,
5 decision to revoke the Lathrop Mill Reclamation Permit #0171 because ABC's Appeal fails
6 to set forth any facts or law showing that NDEP acted outside the scope of its jurisdiction
7 and authority. ABC violated NRS 519A.260 and NAC 519A.235 by failing to timely pay its
8 annual reclamation fee by April 15, 2019. Based on this fact alone, NDEP had authority
9 to revoke ABC's Permit and forfeit ABC's surety. NDEP took that action on February 6,
10 2020, and that decision took effect 10 days after it was made. ABC's Appeal makes no
11 claim that NDEP failed to follow the statutory due process requirements for revoking its
12 Permit. Based on these undisputed facts, it is clear ABC's failure to pay its annual permit
13 fee provided a sufficient basis to revoke ABC's Permit and forfeit its cash surety.
14 Therefore, NDEP committed no "error of law" in deciding to revoke ABC's Permit.

15 DATED this 15th day of May, 2020.

16 AARON D. FORD
17 Attorney General

18 By: /s/ Daniel P. Nubel
19 DANIEL P. NUBEL (Bar No. 13553)
20 Deputy Attorney General
21 100 North Carson Street
22 Carson City, Nevada 89701-4717
23 Tel: (775) 684-1225
24 Fax: (775) 684-1108
25 Email: DNubel@ag.nv.gov
26 *Attorneys for Nevada Division of*
27 *Environmental Protection*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and on this 15th day of May, 2020, I served a copy of the foregoing, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS, via email to:

Val King
Executive Secretary
State of Nevada
State Environmental Commission
Email: vking@ndep.nv.gov

Byron Thomas, Esq.
3275 S Jones Blvd
Las Vegas, NV 89146
Email: byronthomaslaw@gmail.com
Attorney for ABC Recycling LLC

/s/ Daniel Nubel
Daniel Nubel
State of Nevada,
Office of the Attorney General

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INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Declaration of Todd Process	2

EXHIBIT 1

EXHIBIT 1

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BEFORE THE STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION

In the Matter of:

ABC RECYCLING LLC'S APPEAL OF
NDEP'S FEBRUARY 6, 2020 DECISION
TO REVOKE THE LATHROP MILL
RECLAMATION PERMIT #0171; AND
FORFEIT OF THE RECLAMATION
SURETY CASH DEPOSIT

DECLARATION OF
TODD PROCESS

I, TODD PROCESS, declare as follows:

1. I am a Reclamation Branch Supervisor with the Bureau of Mining Regulation and Reclamation (BMRR) of the Nevada Division of Environmental Protection (NDEP). BMRR serves the vital function of regulating the environmental impacts of the mining industry. As the Reclamation Branch Supervisor, I have knowledge of the matters asserted herein and am competent to testify thereto.

2. On June 15, 2012, NDEP transferred Reclamation Permit #0171 to Cadence Industries LLC. The Permit was subsequently transferred to ABC Recycling LLC ("ABC") on June 9, 2015. As of May 15, 2020, the last time that BMRR approved a revised reclamation plan on this permit was in 2009, when Galtar LLC was the permittee of record.

3. As Reclamation Branch Supervisor, I have access to a database that shows all permit modification requests that have been received or processed by BMRR since Galtar LLC's revised reclamation plan was approved in 2009.

4. A review of this database shows that ABC has never submitted a revised reclamation plan to NDEP for review and approval. NDEP has requested a revised reclamation plan from ABC in the past, but ABC never submitted one. NDEP conversations with ABC indicate that the reason ABC has never submitted a request for

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1 a revised reclamation plan is due to the fee required by NAC 519A.227 for a major
2 modification to a permit (approximately \$4,166).

3 I declare under penalty of perjury that the foregoing is true and correct to the best
4 of my knowledge, information and belief.

5 Executed this 13th day of May, 2020.

6
7 
TODD PROCESS



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

SEC Appeal Prehearing Conference

Notice Pursuant to NRS 233B.121, NRS 241.034, and NAC 445B.891

Date: June 12, 2019

To: Appellant:
ABC Recycling Industries, LLC
Lathrop Mill
Represented by Byron Thomas, Esq.

Respondent:
Nevada Division of Environmental Protection
Represented by Dan Nubel, Esq.
Office of the Attorney General

From: Valerie King, CPM, Executive Secretary

Subject: Notice of Prehearing Conference to Rule on Motion for Summary Judgment: Nevada Division of Environmental Protection (NDEP) Reclamation Permit #0171 - Revocation

A three-member panel of the State Environmental Commission (SEC) has scheduled a prehearing conference regarding the above referenced permit. The prehearing conference will be held on June 12, 2020, beginning at 9:00 am.

Pursuant to the Governor's Emergency Directive 006, this meeting will be conducted online and there will be no physical location for the meeting. This meeting can be heard live over the Internet on the NDEP LifeSize meeting system at a meeting link that will be identified in the Agenda no later than three days prior to the prehearing conference. The prehearing conference date was selected after consultation with the parties.

The SEC has jurisdiction to hear this appeal pursuant to NAC 519A.390. The statutes and regulations allegedly violated, as cited in the request for an appeal form submitted by ABC Recycling Industries, LLC. (ABC Recycling) are: NRS 519A.150(9), NRS 519A.200, NRS 519A.210, NRS 519A.260, NAC 519A.220, NAC 519A.235, NAC 519A.390, and NAC 519A.400.

About the Appeal and Prehearing Conference: On February 17, 2020, ABC Recycling filed a request for an appeal hearing.

In summary, ABC Recycling stipulates the grounds for the appeal regarding the Lathrop Mill Reclamation Permit #0171 revocation by NDEP's Bureau of Mining Regulation & Reclamation is:

(1) The final decision was affected by other error of law.

Specific complaints in the request for an appeal hearing include NDEP's failure to provide test results of the tailings from American Borite, NDEP's failure to perform yearly inspections and approve reclamation activities, NDEP's failure to allow soil enhancements to complete reclamation, NDEP inspector's inconsistencies regarding approval of soil amendments, and NDEP's failure to allow soil enhancements to be produced on-site which prolonged reclamation activities.

On March 11, 2020, NDEP filed a motion for summary judgment. The SEC consequently issued an order on March 12, 2020 granting a prehearing conference to rule on the motion for summary judgment and set a briefing schedule. The issues for this appeal are, or will be, further clarified in the prehearing briefs.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: https://sec.nv.gov/uploads/documents/SEC_Rules_of_Practice.pdf NRS 233B.121 to 233B.150 are also applicable. See: <http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec121>

Related Information: Additional information about this appeal is available on the SEC website at the following location: <https://sec.nv.gov/meetings/abc-recycling-industries-llc-request-for-appeal-hearing>

ecc: Appellant - Certified Mail #9171 9690 0935 0012 2756 22
NDEP
SEC Appeal Panel
SEC Legal Counsel



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

SEC Prehearing Conference Agenda - Amended with
New Meeting Access Information
ABC Recycling Industries, LLC
Reclamation Permit #0171

A three-member panel of the State Environmental Commission (SEC) has scheduled a prehearing conference regarding the above referenced permit. The prehearing conference will be held on June 12, 2020, beginning at 9:00 am. Pursuant to the Governor's Emergency Directive 006, this meeting will be conducted online via Lifesize and there will be no physical location for the meeting.

To join the meeting click on: <https://call.lifesizecloud.com/3886472>

Join the Lifesize meeting using Skype for Business:

<https://skype.lifesizecloud.com/3886472>

Call in by Phone (audio only)

United States: +1 (312) 584-2401

Meeting extension: 3886472#

The following items may be taken out of order and/or items may be combined for consideration. Items may also be removed from the agenda or the SEC may delay discussion relating to an item on the agenda at any time. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual, the SEC may refuse to consider public comment. See NRS 233B.126.

1. Call to order and establishment of three-member panel, pursuant to NAC 445B.893. (Discussion)
2. Public Comment (Discussion)
Members of the public will be invited to speak before the SEC; however, no action may be taken on a matter during public comment until the matter itself has been included on an agenda as an item for possible action. Public comment may be limited to two minutes per person at the discretion of the chairperson.

3. Prehearing conference regarding Reclamation Permit #0171 pursuant to NAC 445B.8913: ABC Recycling Industries, LLC, (Lathrop Mill) requested an appeal hearing regarding the revocation of its permit. The Nevada Division of Environmental Protection filed a motion for summary judgment, which will be ruled on during the prehearing conference. (For Possible Action)

4. Public Comment (Discussion)

Public comment may be limited to five minutes per person at the discretion of the chairperson and is subject to the requirements noted in agenda item 2 above.

5. Adjournment

As required by the provisions of chapters 233B and 241 of Nevada Revised Statutes, this agenda will be posted no later than three working days prior to the hearing at the following locations:

- Nevada State Library & Archives, 100 N. Stewart St., Carson City, NV;
- Dept. of Conservation & Natural Resources, 901 South Stewart Street, Carson City, NV;
- Nevada Division of Environmental Protection, 2030 E. Flamingo Rd, Las Vegas, NV;
- Nevada Division of Minerals, 400 W. King Street, Carson City, NV.
- Nevada Department of Administration Website

This agenda and supporting material for the above referenced request for an appeal hearing and prehearing conference are posted on the State Environmental Commission's website at: <https://sec.nv.gov/meetings/abc-recycling-industries-llc-request-for-appeal-hearing>. Supporting material is also available at the office for the State Environmental Commission, 901 South Stewart St., Suite 4001, Carson City, NV. Supporting material or additional information may be obtained by contacting Valerie King at vking@ndep.nv.gov.

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STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION
PREHEARING CONFERENCE
FRIDAY, JUNE 12, 2020

GANS: Let's try to start this meeting. I want to ask a quick question first though. Can everybody have clear video or is it breaking up? Shake your head yes or no.

KING: Yeah, right now everything is clear.

GANS: Okay, let's try this then. Sometimes my audio is breaking up, so we'll have to just go along here and see what happens. Okay, with that, we will start the meeting. Looks like we're starting about 15 minutes late. It's 9:15.

I want to say good morning to everybody. Thank you for being here. My name is Jim Gans, and I'm the Chairman of the State Environmental Commission. Joining me today are two other members of the Commission, Ms. Kacey KC. And I am not double-talking, that is her name, and Mr. Tom Porta.

For the record, this prehearing conference is being convened at 9:15 a.m. on Friday, June 12, 2020. Pursuant to the government's Emergency Directive 006, there is no physical location for this meeting and access to this meeting is through the Lifesize system, where all parties and members of the public can either participate through videoconference or via telephone.

1 The conference is open to the public. An agenda for
2 today's prehearing conference was posted and made available to
3 the parties and the public.

4 Today Ms. Kacey and Mr. Porta and I will be the panel for
5 the prehearing conference. By way of background, this
6 prehearing conference is in response to a February 17, 2020
7 request for an appeal hearing from ABC Recycling Industries,
8 LLC (ABC) following the revocation of its Reclamation Permit
9 #0171 by the Nevada Division of Environmental Protection,
10 NDEP.

11 ABC contended in its request that NDEP's final decision
12 was affected by error of the law. On March 11th, 2020, NDEP
13 filed a motion for summary judgment. The SEC's role today is
14 to rule on NDEP's Motion for Summary Judgment. Summary
15 judgment is awarded if the undisputed facts and the law make
16 it clear that it would be impossible for one party to prevail
17 if the matter were to proceed to an appeal hearing.

18 My next sentence I want to read twice, especially for our
19 panel. This panel must consider all designated evidence in
20 light of the most favorable to the party opposing the summary
21 judgment motion (ABC). I'm going to read it again. This
22 panel must consider all designated evidence in the light most
23 favorable to the party opposing the summary judgment motion.
24 The SEC will consider the arguments heard today to make its
25 ruling.

1 Today's agenda has two public comment periods, one before
2 the ruling on the Motion for Summary Judgment and one
3 following the ruling. Comments associated with ABC in any
4 capacity must not be provided during the first public comment
5 period to ensure an unbiased proceeding. If you are here
6 today to comment on anything to do with ABC, you must save
7 your comments until the second public comment period.

8 With that, I'd like to advise everyone here today that
9 this proceeding is a prehearing conference conducted pursuant
10 to NRS Chapter 233B. This conference is a quasi-judicial
11 proceeding and we would ask everybody, including members of
12 the public, to conduct themselves respectfully as if they were
13 in court.

14 Also, and very important, please place your microphone on
15 mute when you are not talking. I guess that really helps. It
16 helps me anyway.

17 Before we begin, I would like to verify that all
18 appropriate parties were provided adequate notice to the
19 prehearing conference or in turn, waived their rights to that
20 notice. I'm looking for agreement to this statement. Does
21 everybody agree with that? Does anybody not agree? I have to
22 make sure everybody knows what's going on here. Okay.

23 At this juncture, I would now like the parties to the
24 prehearing conference to introduce themselves. We will start
25 with ABC. Anyone from ABC?

1 THOMAS: This is Byron Thomas.

2 GANS: Byron, I see you. Thank you. And
3 welcome. Glad to see you today.

4 THOMAS: Yes, sir, and Robert Ford is here.

5 GANS: Anyone else from A - okay. Thank you,
6 sir.

7 FORD: My name is Robert Ford, Manager of ABC.

8 GANS: Okay, got you both. Anybody else from
9 ABC? Okay, NDEP?

10 NUBEL: Good morning, everybody. My name is Dan
11 Nubel. I'm a Deputy Attorney General that represents the
12 Nevada Division of Environmental Protection. Here with me is
13 Frederick Perdomo. He is the Deputy Administrator at the
14 Nevada Division of Environmental Protection.

15 GANS: And who is that?

16 NUBEL: Rick Perdomo. He is - he's on the - I
17 don't know if you can see him on your screen, but he's here.

18 GANS: Okay, thank you. I can see Frederick over
19 there. Okay, and let's continue on. Anybody else that's in
20 the public that is here? Okay, seeing none. I see Kacey KC
21 and I know Tom's out there. Val, is there anybody else that
22 you want to get on record as being present?

23 KING: No, but I would just like to confirm that
24 we do have a three-member panel for today's prehearing
25 conference.

1 GANS: Okay. Are there any other comments or
2 questions from the people right now that I'm looking at on the
3 screen about what we're doing today and we are ready to go
4 forward? If not, I would certainly like to hear it now.

5 KING: Chairman Gans, I'd like to also - I'm
6 sorry, Val King, for the record. I'd like to also just
7 indicate that Henna Rasul, the SEC Legal Counsel is also
8 present in this meeting.

9 GANS: Okay, that's good. She may have to help
10 me. I rely on that, so I would like to just tell that
11 individual that whenever they want to interrupt me, please be
12 my guest. The only person that cannot interrupt me is Dan.
13 Okay, with that, any other comments? Thank you, Dan.

14 Okay, so we're going to call to order this public
15 hearing. Val has already established we have the three-member
16 panel. So my first item on the agenda is the public comment.
17 And I want to say again, we will begin the conference today
18 with public comments, however, if a member of the public wants
19 to speak about activities associated with ABC in general or
20 this case specifically, you'll have to hold your comments
21 until after the panel is finished deliberations and announced
22 its decision.

23 Please note that no action may be taken on any matter
24 during public comment until that matter itself has been
25

1 included on the agenda as an item for possible action. Also,
2 at my discretion, I may limit public comment to two minutes.

3 With that, I am opening the floor to anyone from the
4 public who would like to make comments. Val, have we had
5 anybody sign in for public comments?

6 KING: No, not that we're aware of. But they may
7 join the meeting at any time and offer public comment at the
8 second public comment period.

9 GANS: Sounds good, sounds good. Okay, the next
10 item on the agenda, which is Item 3, the Prehearing Conference
11 regarding the Motion for Summary Judgment. I'd like to open
12 the prehearing conference regarding NDEP's filed motion for
13 summary judgment regarding ABC's request for an appeal
14 hearing.

15 We will begin by listening to NDEP's basis for its motion
16 for summary judgment. Following NDEP we will hear ABC's
17 motion for - no, opposition to the motion for summary
18 judgment. Then NDEP will begin an opportunity to reply. So,
19 we've got three parts here.

20 Following each party's arguments, all three, the panel
21 will have the opportunity to ask questions and I will pause
22 when you guys are done, and I'll ask Kacey and Tom if they
23 have specifically have any comments. Of course, if I do, I
24 will make mine also. So with that, I think that NDEP can go
25 ahead and make its argument.

1 NUBEL: Thank you. So, today NDEP asks that this
2 Commission enter summary judgment in favor of NDEP. The facts
3 and law of this case are straightforward. Statute and
4 regulation requires reclamation permit holders to submit an
5 annual fee to NDEP by April 15th of each year.

6 ABC failed to submit its fee by April 15th, 2019. NDEP
7 gave ABC an opportunity to come into compliance by September
8 13th, 2019. ABC refused to pay. NDEP again extended the
9 deadline to October 11th, 2019. ABC still refused to comply.
10 Finally, NDEP held a hearing with ABC on January 10th, 2020,
11 with ABC where NDEP gave ABC one final chance to come into
12 compliance by January 24th. ABC still refused to come into
13 compliance.

14 Despite these many opportunities, ABC never paid its
15 annual fee and so NDEP justifiably revoked ABC's permit.
16 ABC's appeal claimed that NDEP committed an error of law in
17 revoking ABC's permit, but an allegation of an error of law
18 requires ABC to show that NDEP acted outside of its legal
19 authority in revoking the permit.

20 ABC cannot do that here. NRS 519A.150, subsection 9,
21 specifically grants NDEP the authority to suspend or revoke a
22 permit for a permit holder's violation of a statute or a
23 regulation. ABC's failure to pay its required annual fee is
24 exactly that, a violation of NRS 519A.260 and Nevada
25 Administrative Code 51A.235.

1 Summary judgment is appropriate when no genuine issues of
2 material fact exist. In this case, the only material fact is
3 whether or not ABC paid its required annual fee. There is no
4 genuine dispute as to this fact. ABC's briefing admits that
5 it did not pay the annual fee. Instead, ABC's briefing seemed
6 to contend that ABC was justified in not paying the required
7 fee because of issues relating to an alleged reclamation plan.

8 First, it's important to note that ABC's contentions
9 relating to the requested reclamation plan are not true. ABC
10 never submitted a request to revise its reclamation plan to
11 NDEP. But second, and more importantly for the purposes of
12 this hearing, any potential revised reclamation plan is
13 irrelevant to this case.

14 No statute or regulation allowed ABC to refuse to pay its
15 required permit fee because it feels it has been wronged.
16 Such a ruling would be disastrous to NDEP's mission because it
17 would encourage unlawful withholding of fees that fund the
18 Bureau for Mining and Reclamation.

19 Since there is no dispute as to the material fact in this
20 case, NDEP is entitled to judgment as a matter of law. The
21 law is clear that NDEP has the legal authority to revoke a
22 permit for a permit holder's withholding of the fee. This
23 Commission should enter a judgment in NDEP's favor on ABC's
24 appeal because there are no genuine issues of material fact
25

1 and NDEP acted within its authority to revoking ABC's permit.

2 Thank you.

3 GANS: Kacey, I'll start with you. Do you have
4 any questions or comments from NDEP?

5 KC: No, I don't have any questions.

6 GANS: Mr. Porta, Tom, do you have anything that
7 you want to ask NDEP?

8 PORTA: No questions at this time, Jim.

9 GANS: Okay, NDEP, I have a question. It seems
10 to me from what I just heard you say and the reading of the
11 briefs that you have narrowed this issue down to one thing.
12 And correct me, I'm looking for where I may be
13 misunderstanding. You've narrowed this down to merely the
14 payment or nonpayment of an annual fee. Is that correct?

15 NUBEL: Yes, that is what this motion is about is
16 that there is one material fact to NDEP's decision to revoke
17 ABC's permit, and the basis for that is actually stated within
18 the letter that NDEP sent to ABC revoking the permit.

19 So, because you have that information, which is that ABC
20 did not pay its fee, you can make the legal determination that
21 ABC was required to pay the fee and that NDEP has the
22 authority to revoke a permit based on a permit holder's
23 nonpayment of the fee. And really, all other issues to this
24 case are immaterial and irrelevant because NDEP's basis for
25 revoking the permit is supported by law and fact.

1 GANS: NDEP - during NDEP's presentation, you
2 mentioned some NRS. Can you read me the one, for the record,
3 that supports what you're saying?

4 NUBEL: Absolutely, so I'll read for you NRS
5 519A.150, subsection 9. The heading for this statute is
6 Powers of the Division, referring to the Division of
7 Environmental Protection.

8 And it says that, "One of the powers of the Division is
9 to suspend or revoke a permit upon a noticed hearing and
10 finding by the Division that the holder of the permit has
11 violated any provision of NRS 519A.010 to 519A.280, inclusive,
12 a plan of reclamation, any condition placed on a plan of
13 reclamation or any regulation adopted by the Commission."

14 And then I would also point you to - and I could read
15 those if you like, the statute and regulation that require ABC
16 to pay its annual fee.

17 GANS: Go ahead. I want to make sure this is all
18 on the record, because you have narrowed this issue down to
19 something very simple, and for me for one, I want to hear ABC.
20 I want to know why you've narrowed this down and they don't
21 agree with that, that there must be some exception or
22 something that I'm missing.

23 NUBEL: Sure. So, the NRS that I'm pointing to
24 for the required fee states, and it's NRS 519A.260, "That each
25 operator shall, on or before April 15th of each year, submit to

1 the Administrator a report relating to the status and
2 production of all mining operations and exploration projects
3 in which the operator has engaged and identifying each acre of
4 land affected and land reclaimed by that mining operation or
5 exploration project through the preceding calendar year."

6 "And shall pay to the Division a fee of (a) One dollar
7 and fifty cents for each acre of public land administered by a
8 federal agency; and (b) Five dollars and fifty cents for each
9 acre of privately owned land." That is the statute that they
10 failed to comply with by not submitting their annual fee by
11 April 15th.

12 And I also just would note that the briefing by ABC
13 doesn't even argue that the fee was due. It doesn't argue
14 that the fee wasn't paid, and it doesn't argue that NDEP can't
15 revoke a permit for the failure to pay a fee. Really it just
16 tries to sidestep this entire issue by talking about some kind
17 of revised reclamation plan that they say was submitted, but
18 was not.

19 So, I think that the issue here is very narrow. It's
20 does a permit holder have to pay a fee? Yes, that a legal
21 determination that you can make. Did ABC pay its required
22 fee? No. That's a fact that is admitted by the other side.
23 They admitted in their briefing, and it's a fact that's
24 supported by the exhibit that we submitted, the declaration of
25

1 Joe Sawyer, who is the head of NDEP's Bureau of Mining and
2 Reclamation.

3 And third, does NDEP have the authority to legally revoke
4 ABC's permit based on that nonpayment? And it does, and I
5 just read the statute which grants NDEP that authority. So,
6 I'm interested as well to hear from ABC what their legal view
7 here is because from the briefing that I saw, it doesn't
8 really show that ABC acted in any way unlawfully in revoking
9 their permit.

10 GANS: Thank you. Kacey, do you have a question
11 or a comment?

12 KC: I do. It just came up. So, I recognize
13 this doesn't [inaudible] Dan, inside 19A.260 you said they are
14 required to submit a report as well as payment for the annual
15 fee. Did the report come in?

16 NUBEL: I don't believe so. That's an answer I
17 can get for certain from NDEP. But I know that the basis for
18 the revocation that they stated in the letter is the
19 nonpayment of the fee, which both are required, the report and
20 the fee. I don't believe that one was submitted, but I can
21 get that information.

22 GANS: Kacey, anything else? Thank you. Mr.
23 Porta, anything else before we proceed?

24 PORTA: No, Mr. Chairman.
25

1 GANS: Okay, with that, we will go to the
2 presentation by ABC. Gentlemen, the floor is yours.

3 THOMAS: This is Byron Thomas for ABC Recycling.
4 Our position is this. It's very simple. You have to
5 understand the course of negotiation or the course of conduct
6 between the parties, because our argument is simply that the
7 withdrawal or the revocation of the license was simply a
8 pretext regarding the stalled negotiations concerning the
9 reclamation plan.

10 And I admit that maybe the reclamation plan had not
11 actually been submitted, but there were ongoing negotiations
12 between the parties concerning the reclamation. At issue,
13 when the bond for the property was initially calculated way
14 back, I believe it was 2008, it was substantially inadequate.
15 The previous owner of the property, American Borate
16 [phonetic], caused substantial damage to the property.

17 When ABC Recycling came in, they found these dangerous
18 conditions and attempted to ameliorate it, spent millions, as
19 a matter of fact, trying to ameliorate these conditions. The
20 issue came about when the state refused to take into account
21 the use of greenwaste to help ameliorate the problem without
22 any consideration for all the millions of dollars that's
23 already been spent.

24 So, our position is, and we were negotiating in good
25 faith with NDEP. We were trying to resolve this matter, and

1 considering the millions of dollars that had already been
2 spent to revoke the permit, when we have been negotiating in
3 good faith, is simply pretextual and a part of an arbitrary
4 and capricious ruling that is simply not allowed. And that is
5 our basis for why the motion for summary judgment should be
6 denied. I yield the floor to [inaudible].

7 GANS: Is there anything else? Is that your
8 presentation?

9 THOMAS: Well Mr. Ford would like to - I apologize,
10 Mr. Ford would like to speak.

11 GANS: Certainly, go right ahead, Mr. Ford.

12 FORD: This property, just to give a little
13 history, I've been involved in it since 2004. I was working
14 as an employee at the time and we - I didn't take the property
15 myself until 2011. I bought it at a foreclosure sale.

16 After I bought the property at the foreclosure sale, I
17 met with NDEP, Mr. Bruce Holmgren, and Bruce Holmgren allowed
18 me to put on a cover of green waste. I have the letter in
19 front of me, 2012. He released all of the [inaudible] pits on
20 the site that none of these guys remember cause they hadn't
21 been here that long.

22 Todd Suessmith know it, and he asked me at that time, he
23 said, "Robert, you can take the reclamation bond, and if you
24 can't get nothing to grow, I'll just end the permit." Because
25 this is not an active mine permit. Like this [inaudible]

1 sand, this is not an active mine. This is a reclamation job
2 that's not happening because the plan that they had from
3 American Borate in 1999 said it was going to dry by 2013.

4 The material has not dried today. The material is still
5 wet. It was planned to be a six-inch covering. It ended up
6 taking six feet of covering. This property, Mr. Holmgren from
7 NDEP and Todd Suessmith, I met with both of them - I got
8 letters from both of them, align green waste, and the only way
9 I could cover this reasonably is put on material that I can
10 get at no cost.

11 I got some NDEP bond releases from Mr. Holmgren and on
12 this last release he said, "Robert has put in three feet of
13 material on this property and it helped it a lot." I have
14 those letters.

15 So, when I finally regrouped, Todd Process - I mean Todd
16 Process came in the picture, a new guy. Paul Comba was in
17 before, the one that approved everything, him and Bruce
18 Holmgren, and Todd Suessmith. So, the new guy come along,
19 Todd Process.

20 I met them in Reno with Mr. Sawyer, and I made it real
21 clear. I said money ain't a problem, but I need to have an
22 agreement that they wrote me a letter you couldn't put green
23 waste on the property to reclaim it. Todd Process, but he
24 didn't know Bruce Holmgren had already wrote another letter.

25

1 So, it's a bunch of inadequately papers come from NDEP,
2 you know, and at that meeting in Reno they advised me to hire
3 a consultant. I took their advice. The consultant - they
4 said get him, and if he approve everything let's go forward.
5 I said as long as that consultant approves everything, I'm all
6 set.

7 Now this is the second consultant they have gave us. The
8 first one was Nate Robertson [phonetic], the first consultant
9 that was gave by NDEP. And you know, I got letters here where
10 the hold ponds is over the limit, and these ponds have been
11 over the limit and Nye County has made brown fields monies
12 available, and we have tested them and they still over the
13 limits.

14 So, when Nate Robertson came involved, they said, "Hey,
15 forget about those ponds; let them go. Don't tell nobody
16 they're over the limits." That's what the letter said.
17 "Don't tell anyone they over the limits; keep it quiet." This
18 is from an engineer that NDEP gave us.

19 So now, I take their second advice and hire a new
20 engineer and the date for that guy to get this done was past
21 the date that they wanted me to pay the payment. I told them
22 I just want a piece of paper that they going to honor what
23 Bruce Holmgren agreed on and Todd - Paul Comba. I just want
24 one piece of paper.

25

1 Yeah, Mr. Ford, you can keep reclaiming the property.
2 You can get the thing to seed or you can't reclaim the
3 property. But for me to just pay \$4,000 a year when I could
4 be done with this project two years ago if they stopped
5 changing the management is this is going on and on and on.
6 Now it's going to cost somebody to go out there and reclaim
7 it.

8 I didn't make this problem. This problem was made by
9 American Borate. Those ponds is like quicksand, and I'm out
10 here trying to fix the problem, you know, and you can't fix
11 the whole problem with \$200,000. You can't just fix it with
12 \$12M.

13 And I'm doing something to try to help the state and help
14 Nye County, but you know, I don't even want to be in this
15 position myself, and I only own 30 percent of this land. All
16 I own is 30 percent. The other guys, the guys out of Canada,
17 they own 70 percent. That's what I told them at that meeting
18 that day and, you know, they're worried about a fee and I'm
19 worried about getting done. I want to get complete.

20 Now we already wasted about three years - about seven
21 years with BLM in court because there was no survey on this
22 property, never done. I asked NDEP for records. They don't
23 have no records, they don't have no survey, they don't have no
24 nothing. Now we have new items that came up and the south, in
25 the north and [inaudible] is not even on the property.

1 So, everything has not been inspected as per the plan,
2 with no survey ever done, and all I'm trying to do is get this
3 done where everybody can be out of this. I can get enough
4 materials to finish covering just like Bruce Holmgren and Todd
5 Suessmith told me to use to get this thing finished, and
6 everybody is a winner.

7 But I'm not going to go up there and dump something
8 illegally where somebody tell me well Bruce is no longer here;
9 you can't dump it. Todd Process's letter said, "No material
10 to enrich the soils to get it to grow material." The only
11 thing left on this permit is soils enhancement and it's part
12 of the permit. It's written right on the permit on the second
13 page, you can enhance the soil with anything that you can get
14 that's going to improve the soils.

15 And that's kind of my position. I have no problem paying
16 the money if it's agreed and understood that if Bruce Holmgren
17 was wrong for saying go do it, let me know. If Todd Suessmith
18 was wrong, let us know. But somebody has to have one mind,
19 and this thing with just don't tell anybody the pond is over
20 the limit, that's not the way to be.

21 So, that's my position on these ponds, and I'd like to
22 resolve it, but it's a one-way street for me. They don't want
23 to work with me on giving me an agreement. I need an
24 agreement that, you know, that this thing - and in the Reno
25 meeting they promised, as soon as this soil is [inaudible] say

1 you can do it, it's okay, just take that guys information, let
2 me pay on the fee, it's all over with. Thank you.

3 THOMAS: And just to follow up, as we - our issue
4 is that this is a much broader issue than what NDEP is saying
5 it is, that it's simply a pretext and it is also arbitrary and
6 capricious, and that's also why I put in the 56F motion
7 requesting more time to gather more documents to show that
8 this is really just a pretext and that it's really arbitrary.

9 GANS: Okay. I thank you both. I understand
10 what you're saying. I'm assuming my mic is on. I understand
11 what you're saying, and I have a few questions, but I'd like
12 to get Kacey first with anything that she wants to ask you.

13 KC: Could you point me to the letter where
14 you're saying that it said - what were you saying, that it was
15 -- that it didn't matter or what - I read all the letters that
16 were attached here, and I didn't see [inaudible]?

17 THOMAS: And that was my issue. That's why I
18 wanted more time to gather the evidence to oppose this as
19 required by law by 56F. We were just able to get ahold of
20 this information. We were just able to get ahold of this
21 information and again, this would be a part of the additional
22 evidence that we can produce if 56F was approved.

23 I correct - I - it was renumbered and I - I don't have
24 the actual what it - what the new number is, but it's the same
25

1 theory that if a party needs more time to gather additional
2 evidence [audio cut].

3 KC: Yeah, I saw that in your letter, your
4 motion, but the letter that you guys are speaking to isn't in
5 our packets here, so that's what you were saying you wanted
6 more time to produce?

7 THOMAS: Yes, and that and other documents, yes.

8 GANS: Okay, Kacey, anything further? Thank you
9 very much. Tom, how about you?

10 PORTA: Thank you, Jim. Yes, when was a
11 reclamation plan actually submitted to NDEP for approval?

12 FORD: 2012 and 2011. It's been about four
13 submitted, and Mr. Holmgren said that it wasn't required to
14 modify the permit because it was all under the permit we got.
15 It was part of seeding so all we was doing was putting soils
16 enhancement in and so he said was there was no major
17 modification required.

18 My attorney at the time was Stephen Gibbs [phonetic], and
19 I have all the matters and we did put those matters in there
20 from Stephen Gibbs and Bruce Holmgren, I think they was in
21 there. I'm 95 percent sure. And he - I met with all of them
22 and they tried to get me to just close the permit out and just
23 take the bonds out and be done with cause they said, "Robert,
24 you can't fix this problem, I don't think."

25

1 And what stopped us from taking the bond down was we went
2 into the landfill department, and the landfill department was
3 going to change it over from mining to a landfill, and so I
4 spent another \$200,000 on plans on the landfill and it got all
5 approved, and then we were going to take the bond we had and
6 move it to the landfill bond. So, and then the new people
7 came in and started all over from scratch on me, you know.

8 THOMAS: The letter from Stephen Gibbs is a part of
9 Exhibit B, but [inaudible] we didn't have the other document.

10 PORTA: And for the Division, was this plan
11 approved? I saw in my packet a letter back to ABC stating
12 that the - ABC had to get local approvals first before NDEP
13 could move on approval of the plan. Did that ever happen?

14 THOMAS: Yes, that - was that question directed to
15 Mr. Ford or NDEP?

16 PORTA: I guess it - well that would be more
17 appropriate for NDEP.

18 NUBEL: Okay, and I don't know the status of any
19 local approvals that ABC had to obtain, but what I do know is
20 that no plan was ever submitted to the Division in writing as
21 was stated under the rule.

22 PORTA: Okay, that's what I'm trying to get at. I
23 mean, Mr. Thomas, if you're trying to make the argument that,
24 you know, the Division is holding up the plan and you're not
25

1 going to pay the fee because of that, but if you haven't even
2 submitted a plan, I'm failing to see the connection here.

3 THOMAS: Well the connection is that we've been
4 negotiating to try to resolve these issues, like Mr. Ford was
5 told at one point, there wasn't a need to modify the plan.
6 Now all of a sudden there is. So, we were just trying to
7 figure out exactly what was going on.

8 FORD: Can I say something?

9 GANS: Certainly.

10 FORD: Okay, this plan -

11 THOMAS: This is Robert Ford. He wanted to address
12 the issue of the plan.

13 FORD: This plan has been submitted three times.
14 I got every email from Todd - of Mr. Paul Comba. I got the
15 emails from Bruce Holmgren. We met in Reno. My engineer came
16 from Florida, James Golan [phonetic] and met him in Reno. So,
17 this plan has been submitted three times.

18 But these new people don't know it's submitted, and I
19 don't know if they have many files because they don't remember
20 no tests done on the ponds on this property. I have proof
21 that every one of them was submitted. I know it was an
22 overkill to put it all in here, and Byron was trying to cut it
23 down because it's an overkill, but I got at least three plans
24 that's been submitted from HSA Golan to myself to two more
25 engineers that I hired.

1 THOMAS: Any other questions? And again, if that
2 is the issue, that would be the purpose of the 56F. That
3 would give us more time to get that document [inaudible].

4 GANS: Tom, you have any questions?

5 PORTA: No, not at this time.

6 GANS: Okay. Mr. Ford and Mr. Thomas, I'm
7 troubled by all this. I'm troubled because I think I
8 understand what you're saying and your frustration, and we're
9 not - my problem with this whole thing is I'm not sure that
10 this hearing is the place and the method of resolving what
11 you're bringing forward.

12 I don't disagree with you. If what you're saying is
13 true, I think I'd be frustrated also. But I'm concerned about
14 your not meeting the law when it says you have to pay
15 annually. Do you disagree with the intent or the letter of
16 that law for the annual payment? I haven't heard you say this
17 yet.

18 THOMAS: To the extent that the law is used as a
19 pretext, I do, Your Honor, and I think that any time the state
20 deals with a citizen, it has to deal with that citizen fairly
21 and reasonably. It can't simply use a \$4,000 bond to get rid
22 of millions of dollars of work. That's simply a pretext.
23 It's right up there with arbitrary and capricious as I cited
24 in my brief, and it's a wider issue that needs to be
25 [inaudible].

1 Any decision that is arbitrary and capricious is grounds
2 for that decision being reversed. And I believe when you look
3 at the history of the negotiations, how much money has been
4 spent, the idea that they would revoke a permit for \$4,000 is
5 arbitrary, is capricious, is simply a pretext.

6 GANS: Okay, Dan, you'll have your chance. You
7 have another shot at answering this, so right now I'm going to
8 ask you to hold, please.

9 Well gentlemen, I think you need to understand also that
10 whenever you file for a hearing, we as a panel have the
11 obligation of making sure we're following the law. This panel
12 nor the SEC has any authority under the law to say that you
13 don't have to pay your annual fee. It's as if we're at an
14 impasse here.

15 It's as if - you're saying we're not going to pay the fee
16 until you give us some go ahead, and under the law, NDEP, I
17 think - maybe I'm misinterpreting this, but they're saying
18 look, you're not paying your fee, so therefore there's nothing
19 more we can do.

20 I really don't like this kind of impasse when two parties
21 put us in a position where then Mr. Porta and Ms. KC and I
22 have to rule on the law. I don't take exception to your
23 argument. I'm not positive you need more time. Actually, I
24 really - I really agree with you. We need to get this
25

1 resolved. What I'm trying to tell you is I'm not sure this is
2 the method to get it resolved.

3 You certainly got it out on the table in front of us, but
4 I can't say okay, right now personally, I'm just telling you
5 this, guys, because I think you make some good points. But
6 for me, I can't just say to you, okay, we're going to ignore
7 the law.

8 This panel has no authority of telling you now you go out
9 there and you tell them what you want them to do or you
10 approve this or ask them for whatever you need and then we'll
11 consider whether or not we need to go ahead and pay this fee.
12 Gentlemen, do you understand the kind of position you're
13 putting this panel in?

14 THOMAS: I understand the position the panel
15 believes it's in, however, I also believe that the panel does
16 have the authority to look at a decision and actually look
17 behind why that decision was made. And I understand the
18 argument about now you're going down a slippery slope. I get
19 it.

20 But if the issue comes up again and there is no issue of
21 pretext, there's no arbitrary capriciousness, the person
22 hasn't spent, you know, millions of dollars, then you can find
23 that the decision wasn't arbitrary and capricious and there
24 was no pretext.

25

1 But in the facts of this case, it's clear that the \$4,000
2 is not the real issue that we're having here, that it's simply
3 a pretext for NDEP to get rid of them, and I don't know, maybe
4 pursue legal action - I'm not sure why. But that - the real
5 reason is not the \$4,000.

6 GANS: So, what I'm hearing you say is one party
7 says respond to our request for reclamation, then we'll pay;
8 the other party is saying pay as the law requires, and then
9 we'll consider how we go from here. And that's what I'm
10 hearing. I'm not trying to put words in anybody's mouth.
11 It's like an impasse and this panel has to follow the law.

12 And I'm not saying we don't have some room to say well,
13 we can just rule on it or we can say well let's hold it off
14 and wait for more time if we think that's going to make a
15 difference.

16 So, I want to continue this particular hearing with
17 NDEP's response to what you're saying, but I need you guys - I
18 need Mr. Thomas and Mr. Ford, give me as a member of this
19 panel something that I can rule on, something that isn't
20 against the law, something that will help you. I'd love to
21 help you. I'm just not sure that we're in - where we are,
22 where we need to be to do it.

23 THOMAS: I understand that, and again, I do think,
24 and I cited in the brief, that the standards for any ruling
25 has to be that it is not arbitrary and capricious, and that

1 it's not a pretext for something else. I firmly believe that
2 I cited the case as [inaudible] versus [inaudible] 103 Nevada
3 117,20. So, it's a 1987 case.

4 So, I do think that you have the authority to, at a
5 minimum, deny the request right now based on the fact that
6 this is not simply an issue of whether you pay the fee or not,
7 that this is a broader question that you have to take into
8 consideration in the course of the negotiation between the
9 parties of whether it was done in good faith.

10 GANS: Okay, I heard you. I appreciate that.
11 With that, unless Tom or Kacey has any more follow-up
12 questions?

13 PORTA: I do, Mr. Chairman, just real quick,
14 probably for the Division or Mr. Thomas or Mr. Byron, this is
15 a permit renewal, is it not; not a new permit?

16 THOMAS: It's my understanding that it's a permit
17 renewal.

18 PORTA: Okay, thank you.

19 GANS: Kacey? Okay. Okay, with that I have no
20 further questions either. We will go to what I consider Phase
21 3 of this hearing, which is NDEP's response to ABC, so Dan, I
22 apologize for holding you up, but you have this opportunity.

23 NUBEL: Okay, I appreciate it. Thank you. So,
24 I'm going to try a little advance technology at the start here
25 and do a share screen. Well, that backfired.

1 [laughter]

2 GANS: You're frozen, Dan.

3 NUBEL: Okay. Can you guys see me now?

4 GANS: Yes, I can, yes.

5 KC: What if we all turned off our cameras to see if
6 you can share your screen.

7 NUBEL: It's okay. Yeah, honestly, I'll just
8 point you guys to it because it's the founding document for
9 this case. It's the form that ABC submitted in its appeal,
10 and first I want to note that I don't even think it can be
11 argued that the Division acted arbitrarily or capriciously
12 here.

13 It had two notices of noncompliance, extended the
14 deadline multiple times, held a hearing, and stated the
15 reasons why the permit was going to be revoked in multiple
16 letters, and still ABC refused to comply.

17 But regardless, I'd just like to point out that you are
18 required under the NAC to specify your grounds for an appeal
19 and check all boxes that apply. And there is a box for final
20 decision was arbitrary or capricious, and that box was not
21 checked by ABC. The box that they checked was that there was
22 an error of law on the part of NDEP, meaning that NDEP acted
23 outside of its legal authority or did not have the legal
24 ability to revoke the permit in question.

25

1 So, they didn't even argue right up front that this was
2 arbitrary or capricious. If the Commission was going to
3 consider that argument, then again, I would state that NDEP
4 did not act arbitrary or capriciously here. They gave
5 multiple opportunities to come into compliance, which ABC just
6 continuously refused to do.

7 And I'd also, you know, Mr. Thomas has brought up the
8 Rule 56F a number of times for getting more time, but it
9 doesn't matter if we waited a year, two years, three years,
10 there's no amount of time that's going to change the fact of
11 this case, the one material fact that matters, which is that
12 ABC did not comply with the law.

13 They didn't submit the report and the fee that's required
14 under the NRS and is required under the NAC. Any emails,
15 anything that ABC is going to obtain during that time isn't
16 going to show that they paid the fee. They admitted this
17 during their testimony here and in their briefing. So,
18 there's no reason for more time to be given.

19 I would argue that the standard for summary judgment is
20 that there's no genuine issue of material fact, so let's start
21 with that. The material fact in this case is whether or not
22 ABC paid the fee. That's the fact. And that fact, there is
23 no genuine issue as to it, because ABC admits that, NDEP
24 admits that. That's the battlefield that we're on right now,
25 that we're playing on, is that we all acknowledge that the fee

1 wasn't paid. There's no genuine issue as to that material
2 fact.

3 Given that, that undisputed fact, it is now the
4 commission's opportunity to make a ruling as a matter of law
5 that NDEP has the authority to revoke a permit based on a
6 permittee's failure to pay its annual fee. So, I think that
7 summary judgment is entirely appropriate here.

8 You can see by the types of evidence that's been offered
9 today that if we had a full hearing on this issue, a lot of
10 the testimony that's going to be offered by ABC is going to be
11 irrelevant to the, what we consider to be the material fact
12 which is whether or not the fee was paid.

13 So, a motion for summary judgment to me is entirely
14 appropriate in this case. If you guys have any more
15 questions, I'm happy to answer them.

16 GANS: Kacey, any more questions? Kacey, any
17 more questions? How about you, Tom?

18 PORTA: No.

19 GANS: So, Dan, what I am understanding in this
20 conference, hearing conference, we're having, is you have
21 simplified the issue to very simply the fee wasn't paid. I'm
22 not trying to put words in your mouth. You've got to tell me
23 whether I'm misunderstanding this or not.

24 NUBEL: No, I think that's fair. I think that's a
25 fair way to characterize it, because that is the basis. NDEP

1 provided a letter as to why the permit was being revoked, and
2 the letter stated that it was because the fee was not paid.
3 So, I think it's fair for you to say that this - it's not
4 really me that's making the case like that I'd say; it's more
5 that's the law. The permit has to be paid.

6 ABC is talking about, you know, pretext, trying to read
7 into the minds I guess of, you know, members of NDEP, but
8 really, if you want the text, it's contained in the letters
9 that NDEP sent, and there's three of them which said pay your
10 fee, pay your annual fee, and we can move forward from this.
11 You didn't pay it. We're going to give you an opportunity.
12 You didn't pay it again. We're going to give you another
13 opportunity. That's the text.

14 I don't know, you know, Mr. Thomas talks about subtext,
15 but I don't think that there's any way to possibly you can get
16 at that, and I don't think you need to. I think it's all
17 spelled out in front of you with the exhibits that have been
18 submitted. And it is about the annual fee. That's why the
19 permit was revoked, and that to me, and under the law, is a
20 proper basis for revoking the permit, and that's why we're
21 here.

22 GANS: Dan, I'm going to go out on a limb here
23 now. I understand what you're saying. Obviously, the panel
24 will deliberate on this. My question to you would be a
25 supposition, assuming you are correct, so this whole situation

1 goes away, right? We make this ruling, and everything is
2 fixed and it's over. Do you believe that?

3 NUBEL: No, I wouldn't say it's over because the
4 property still needs to be reclaimed. So, what this hearing
5 is doing is now taking it out of the hands of ABC and instead
6 NDEP, the people charged with ensuring protection of the
7 state, now have a bond that is approximately \$250,000, that
8 they can use to reclaim the property, and they also have the
9 authority under the law to compel ABC to engage in any
10 activities that are necessary to reclaim the property.

11 So, this is really just the first step. The most
12 important thing to NDEP is obviously that the property is
13 reclaimed. But now that power will shift to NDEP to make sure
14 that that happens.

15 GANS: I'd like to go a little further on this
16 now. And I don't want to drag this out, guys, and I'm talking
17 to ABC as well as NDEP. I'm kind of disappointed in this, but
18 if there's any other comments that ABC would like to make that
19 they haven't made - I don't want you to reiterate what you
20 already said, because frankly, I think I understand what
21 you're saying and I believe Mr. Ford has tried to do
22 something.

23 I believe Mr. Ford just feels frustrated with the whole
24 situation, and I almost feel like this hearing conference is
25 an attempt to try to bring something forward about what's

1 going on and maybe voice your frustration. But again, guys in
2 ABC, I don't want to put words in your mouth. If there's any
3 final comments that Mr. Thomas or Mr. Ford, you'd like to
4 make, I want to give you every opportunity.

5 THOMAS: Could you give me a couple minutes to talk
6 to Mr. Ford? Is that possible?

7 GANS: Certainly. Certainly. Do we want to take
8 a recess here for a few minutes? Is that okay with you, Tom,
9 and Kacey and Dan, you okay with that?

10 PORTA: Sounds good.

11 NUBEL: I'm good with that.

12 GANS: Okay, I'm seeing a shake of heads so look,
13 it's 10:10 about, if we give Mr. Thomas, Mr. Ford, what do you
14 need, 10 minutes, 15 minutes?

15 THOMAS: 10 minutes should do it.

16 GANS: Okay. Gentlemen, we'll come back in 10
17 minutes. We'll recess for 10 minutes until 10:20.

18 KING: Mr. Chairman, this is -

19 NUBEL: Yes, thank you.

20 KING: Mr. Chairman, this is Val. I would
21 recommend that everyone stays in the meeting so that we don't
22 lose connection during this recess.

23 GANS: I know, Val, and you know, you're really
24 pointing that at me, and I agree with you.

25 [laughter]

1 KING: That's not true. [laughs]
2 GANS: [laughs] Yeah, I agree, let's do that.
3 Okay, we'll come back in 10 minutes.
4 [off the record]
5 [on the record]
6 GANS: Val, can you hear me?
7 KING: I can, Mr. Chairman.
8 GANS: Okay, I've lost track whether I'm on mute
9 or I'm on talk.
10 KING: You're definitely on talk. [laughs]
11 GANS: Okay, is everybody - I think Kacey would
12 prefer I be on mute, by the way. Is everybody back? Are you
13 ready to go since we're all together, that we have Mr. Thomas
14 and Mr. Ford and everybody ready to go back on? Thank you,
15 Frederick.
16 Nubel: Thank you.
17 GANS: We're ready to go. We're reconvening now
18 at 10:20 and I think where we are is, we are with ABC wanted a
19 recess, a short recess, and I think we're ready to hear from
20 you now again, Mr. Thomas.
21 THOMAS: This is Byron Thomas. Mr. Ford would like
22 to make a - put some evidence into the record.
23 FORD: Hey, maybe it wasn't clearly what I said
24 earlier, so I want to kind of slow down and clear this up. I
25 had a meeting on January 6th of 2020. In that meeting,

1 present, that was Todd Process, first time I ever met him,
2 never met him before. He wasn't there at my last meeting.
3 There was Todd Suessmith, which I had met several times, and
4 there was Joe Sawyer in that meeting.

5 At that meeting, the outcome was get a hold of a company
6 called Profile. And that guy in the company was Andy Jung, J-
7 u-n-g. At that meeting, we sent an email to this guy and he
8 was supposed to take the samples from the pond that was over
9 hot that everybody said don't make it a public issue, and he
10 was going to give them the results, saying that we had to use
11 this material that I've been using for six years to reclaim
12 the site.

13 When I left that meeting, it was clearly understand it
14 was waiting on this third party consultant they told me to
15 hire, Todd Process, and he had sent an email about this guy
16 before in 2018 when I was [inaudible] papers and the guy
17 didn't get on board. He said, "Let's get this thing over
18 with." He said, "As long as this consultant gives you the
19 okay, we're back to the way you was doing it."

20 Now in 2012, I was told from Bruce Holmgren and Paul
21 Comba that I didn't have to do no more with the reclamation
22 because they were changing me over to the landfill. So, I've
23 been told twice, "You don't have to do nothing, you don't have
24 to worry about that, make sure you don't have to pay no fees,
25 do you want your money returned?" I said, "No, don't return

1 the money. Save it. We're going to swap it to the landfill
2 permit."

3 Now this new guy, Process, come on, and when we left that
4 meeting on January 6th of 2020, it was clearly understood that
5 this consultant was going to get back to us where we could be
6 on the same page and I was going to pay the fees for three -
7 for two years, not one year.

8 Now, since that day, I have filed a complaint in Nye
9 County against this. I had to, because Nye County approved a
10 brownfield money on this property to help me reclaim it. I
11 had to go to the Nye County Court and file an action against
12 NDEP. That's filed already, got a case number.

13 I don't want to go this route and spend \$200,000,
14 \$300,000 on lawyer fees for 10 years in court and let the
15 property set there, but I'm asking for something that they
16 promised me. I was promised by Bruce Holmgren that nobody
17 looking at the papers. I was promised by Paul Comba and I was
18 promised again on January 6th by all three of these.

19 Todd Suessmith said nothing at the meeting. He said
20 nothing at all. The only person was talking was Joe Sawyer
21 and Todd Process, and Joe Sawyer, who was very nice at the
22 meeting, he understood, he said, "When you get hold to this
23 guy, Robert, get this done." I got hold to the guy and the
24 guy had a problem. He couldn't get the sample done quick
25

1 enough and he was about two months later on getting all of it
2 done.

3 So, all it is, my understanding that we was going to have
4 an understanding that the reclamation could go back as it was
5 when Bruce Holmgren told me I could use the greenwaste. I
6 can't afford to pay \$4,000 when there's no money coming in to
7 pay to reclaim this property. It was underestimated by
8 American Borate years ago and I'm trying to fix the problem.

9 And I'm trying to stay out of the court, but if they push
10 me to no place to go but to fight in the court, then I
11 understand that. But whoever reclaimed it, it has to have
12 material to do it. The ponds did not dry, and if they come
13 after me, they go after American Borate, so I mean if that's
14 what we're going to do is have a fight, I guess we can go that
15 route.

16 But right now, if we just get back to going like Bruce
17 Holmgren already put in writing, this won't be an issue. And
18 if I can pay the money up to the court for the fee for another
19 year, but they promised me that I didn't have to keep continue
20 paying this fee cause I'm not mining. That's what they told
21 me in 2011, 2012.

22 I bought this property from a foreclosure sale for
23 \$11,000 that I should have never spent the \$11,000 on cause
24 it's not worth the money. So, that's the way I see it. I
25 want everybody to understand that when I left that meeting, it

1 was really understood that the consultant that they gave me,
2 and they was all copied on the email on January 12th when the
3 guy said it's going to take them a few more weeks to pull
4 everything together. This is their consultant they gave me.
5 Thank you.

6 GANS: Thank you.

7 THOMAS: This is Byron Thomas. I just wanted to
8 make - and that's why I wanted more time to develop all the
9 facts, Your Honor, and you know, things just haven't been easy
10 because of the Coronavirus. But that's all I was trying.

11 GANS: Kacey, go ahead.

12 KC: So, I have a couple questions. You said
13 that in this meeting of January 6th, 2020, you were told you
14 didn't have to pay fees, but then in a separate sentence you
15 said you were going to pay the fees of two years. In our
16 packet here, the meeting with NDEP was on January 10th on the
17 annual fee, and it still didn't get paid after that January
18 10th meeting where you were - it was discussed that you were.
19 So, how does the 6th meeting and the 10th meeting coincide?

20 FORD: Well and you could be right on the 10th.
21 I'm looking at an email from January 12th, so I was at NDEP on
22 Friday and maybe it was a typo, but on the 12th the consultant
23 that they told me to contact contacted me back on a Sunday, so
24 that mean I met him on the 10th, and Joe Sawyer said, "Robert,

25

1 when we get this consultant to get this done, you're going to
2 probably owe another year." I said, okay, I go pay two years.

3 That's what - I just want to make sure that we can get
4 back to what we was doing with Bruce Holmgren. And he said
5 okay. So, I was waiting on Andy Jung, J-u-n-g, from Western
6 Systems to get back to me that he understood the test that he
7 took.

8 They took the sample. I had to mail him a sample, and he
9 done all that testing for us and he provided the information
10 to us after that on the test, that the pond was hot, and it
11 had to be reclaimed. There's nothing you can do with this
12 property. You can't grow anything unless you get 12 inches of
13 material in there.

14 So, that's what Andy done for us, and he sent that email
15 to NDEP and me in February. So, they knew when I left there
16 that I wasn't paying until Andy got through with this test.
17 That was all understood. That's when I went to Reno to see
18 him.

19 GANS: Thank you. Kacey, is that - do you have
20 other questions or does that answer your question?

21 KC: I'm not sure. So, if - so, you still
22 hadn't received anything then from Andy? If the email was
23 clear you weren't going to pay the fees until you received
24 something from Andy. Have you still not received anything
25 from Andy cause you still haven't paid -

1 FORD: Yes, I got the email from Andy. I
2 forwarded it to both Joe and both Todd and before I forwarded
3 it to them, it already sent another paper out that they taken
4 the bond again because I didn't get it till late.

5 And our agreement was we was going to get this
6 information and he was going to agree, and he was going to
7 give me a paper. Joe Sawyer said he was going to make up a
8 settlement agreement that included two years with a fee. I
9 have not got the settlement agreement like they promised me,
10 and they started back to fighting.

11 So, I got mad and I went and hired a lawyer, and I sued
12 them in Nye County, and they, you know, wasted \$5,000 on that.
13 And so now the lawsuit has not been answered as of today. I
14 didn't default them, and I want to work this out, but I was
15 promised a settlement agreement on the results from Andy and
16 I'll pay the two years and we done.

17 GANS: Anything else, Kacey? Tom, how about you?

18 PORTA: I don't have any questions, Mr. Chairman.

19 GANS: Okay, with that, Dan, I mean I gave ABC
20 another opportunity. Quite frankly, I've heard enough from
21 you, but do you have any other comments?

22 PORTA: No, I think that, you know, that pretty
23 much sums it up. I'll just respond to one thing that Mr. Ford
24 said during his testimony he just gave which is that
25

1 apparently, he was told in 2011 not to continue to pay his
2 fee.

3 I've never seen anything in the record like that, and I'd
4 just like to point out that the fee was paid from 2011 until
5 2017, and then letters were sent saying hey, you need to pay
6 the fee, so I don't think that that statement is supported in
7 the record anywhere. That's all I have to say. Thank you.

8 GANS: Okay. Any more from the panel? We will
9 go on to 3A of this hearing. We've heard from both parties.
10 If there's no other questions from the parties, before we
11 start our deliberations, this will be your opportunity right
12 now to ask those questions of either party before
13 deliberations.

14 Seeing none, the members of this panel will openly
15 discuss the matters of the motion for summary judgment, and
16 after such deliberation, I will entertain motions from the
17 members of the panel, and we'll call for votes on such
18 motions. Please note that a simple majority vote prevails in
19 all matters considered by the commission. After the panel
20 concludes its deliberation and issues its decision, the matter
21 will be concluded.

22 So, I think it's the panel's turn to discuss this, and
23 I'll just start it off. I'm really troubled by this. I'm
24 troubled by the fact that we seem to be at an impasse. There
25 seems to be some misunderstandings. I'm not really sure

1 what's going on here, but I know this panel is here to look at
2 an issue, not a lot of the side issues that go along with
3 this, but one major issue.

4 So, with that, I understand the 56F that's been brought
5 up. Depending on what we believe the issue is, really, that
6 may or may not be at all under our consideration.

7 I also understand that ABC feels that NDEP is withholding
8 approval. Why should they pay their fee when NDEP is
9 withholding approval? I understand that also. I'm not sure
10 that's the issue here either, but it sure does trouble me.

11 So, with that, I'd like to, you know, get comments from
12 you Kacey, and Tom, to enlighten me on how you guys see this.
13 Ladies are always first, Kacey.

14 KC: Technologically challenged apparently. I too
15 am struggling, but I think from what's before us, the summary
16 - the motion for summary judgment - it sounds like it's
17 backwards but it's not, is discussing the multiple letters
18 that were sent as far as the NRS which required the annual
19 payment. It was very clear that if this payment didn't get
20 made, the fee would be revoked.

21 That is what they're saying this determination was based
22 on, and it doesn't state anything in these letters about, you
23 know, these plans, but and, you know, through this process, it
24 was stated that the plan hasn't been submitted, nor has the
25 funding been paid. So I think it's pretty clear in my mind.

1 GANS: All right. Tom, how about you?

2 PORTA: Yeah, a few thoughts. You know, this
3 hearing, being a summary judgment hearing, requires us to make
4 sure we hear all of the appellant's arguments, which I think
5 we have, and I really see it as two separate issues. There's
6 this issue with the permit, renewal, or excuse me, the plan,
7 and the approval of the plan, what was agreed to and what
8 wasn't agreed to. To me, that's a separate issue than what
9 we're supposed to consider here today.

10 What we're supposed to consider here today pursuant to,
11 and again, this is their permit renewal. When they sign on or
12 any entity signs on with a permit with the division, they're
13 required to meet the requirements that are in the permit, and
14 part of that is to pay the fees, submit reports, do testing
15 and things of that nature.

16 And I think everything we've heard today shows that this
17 fee was not paid to the Division as required. And you know,
18 that fee and other requirements are supposed to be complied
19 with regardless of your compliance status or whether you have
20 an issue with the Division.

21 The other thing is when I look at their actual appeal
22 form, the appeal form does not contend that the fee was the
23 issue which with we're supposed to hear today. So, I think
24 the mark was kind of missed, and for us to try to sidestep the
25

1 motion for summary judgment because of this, I don't think is
2 appropriate.

3 We have to decide what's before us today. Did or did
4 they not pay the fee? I think it's clear they did not pay
5 this fee. It's required by the regulations and statutes, and
6 that's what we have to determine today. I didn't see anything
7 else that was presented evidence-wise or information or
8 anything in my packet that shows otherwise.

9 GANS: Thank you, Tom. Again, I probably, if I
10 erred, I allowed a lot of things on the record that weren't
11 pertinent to this hearing. I do that all the time, and when I
12 did that this time, I was sad. I was saddened that this
13 situation exists, that there is a misunderstanding, bad
14 communication, I'm not sure what.

15 I agree totally with Tom. There's an issue here, and the
16 issue is, I believe the permittee has to pay that annual fee,
17 regardless of anything else. It's in the law and you're
18 required by it. The permittees should know that when they
19 pick up a permit, pick up another responsibility. It just
20 almost goes without saying.

21 I have to register my car every year, and if I don't, I
22 cannot go out and claim, oh wait a minute, what you're
23 charging me for this permit is wrong or so what I'm trying to
24 say guys, is I'm troubled. I really do feel that you got some

25

1 legitimate questions and some legitimate concerns about this
2 permit and your project.

3 The point I'd like to make is I think Tom makes it better
4 than I do, is that the real issue here for this hearing is you
5 didn't pay your fee. You chose not to pay the fee and argue
6 that you need to have approval, that NDEP is withholding
7 approval. What I hear you saying is you want the reclamation
8 plan approved; then you'll pay your fee. That isn't how it
9 works from my understanding and reading of the law.

10 So, I'm concerned about this. And I want to say
11 something else. I am - whatever this panel does, one way or
12 the other, it's not going to solve the problem. It's
13 certainly not going to solve, I mean this thing is just going
14 to keep going and keep going until somebody says I give, and
15 that could be ABC; that could be NDEP.

16 And to some degree it looks like NDEP is saying that in
17 this preconference hearing, we give up, we've made three
18 attempts, it's not getting paid, we have no choice, we've been
19 backed into a corner and there's nothing more we can do under
20 the law.

21 And that's kind of where I think things are, although I
22 don't disagree with the arguments made by ABC. There is
23 something going on here that's not working. There's some
24 misunderstanding. So, with that, Tom, unless you and Kacey

25

1 have any other comments, I need to entertain a motion from one
2 of you of how you want this panel to proceed.

3 PORTA: I have no other questions, Jim.

4 GANS: Kacey?

5 KC: I have none either.

6 GANS: Okay, do we have a motion? A motion would
7 either uphold or dismiss the motion for summary judgment by
8 NDEP.

9 KC: I would make the motion to uphold the
10 motion for summary judgment in favor of NDEP.

11 GANS: Is there any discussion on the motion?

12 RASUL: You need a second.

13 GANS: Tom?

14 PORTA: Yeah. I'll second that.

15 GANS: Okay, we have a motion and a second.

16 Discussion?

17 PORTA: Yeah, I'd just like to add, Mr. Chairman,
18 that again, ABC Recycling Industries has not shown or
19 presented any evidence today to the Division that they
20 committed an error, an error of law, and in fact, the Division
21 actually acted within the regulation statutes in this matter
22 and allowed additional time for ABC Recycling to pay the
23 required fee, and they didn't.

24 GANS: Okay, Tom, thank you. I'd like to add to
25 that that ABC's request under 56F is not germane to what this

1 panel has to consider. And unfortunately, because I do have
2 to say I'm still saddened by the total situation, the
3 withholding of approval also does not in any way - that's why
4 I asked the questions - support that hey, by the way, before
5 you pay your fee, NDPE has to do this and this and this and
6 this.

7 Those considerations under that law are not - or I
8 couldn't find them. It just says you have an annual fee, you
9 need to pay your fee, and then we'll get on with life, and
10 that has not occurred. So, that would be my discussion.

11 If there's no other discussion by you, Kacey, or Tom,
12 then I would call the question and I would ask a vote on this
13 motion and I would like all those who agree that this motion,
14 agree with the motion, signify by aye, and maybe we should
15 even raise our hands so on our picture, we know we're doing
16 both. So, with that I'm signifying my agreement with the
17 motion made by Kacey, and I say aye.

18 [ayes around]

19 GANS: Okay, there are no nays. That was a
20 unanimous decision by the panel. And that concludes that
21 portion of this conference.

22 I will now go on to Item 4, which is the final comments,
23 and I would ask if there are any public comments, remind
24 participants the comments may be limited to two minutes per
25 person at my discretion. Please note that no action may be

1 taken on a matter during public comment until the matter
2 itself has been included on an agenda as an item for possible
3 action. I will add that yes, now we will receive any public
4 comments about this ABC summary judgment hearing we just had.
5 The floor is open.

6 Okay, I hear none, I see none. And with that we'll have
7 the meeting adjourned. Thanks everybody. And I do want to
8 thank - this is the first virtual meeting we've had of the SEC
9 as I know, and it went well.

10 I appreciate ABC, I appreciate NDEP for being patient,
11 first of all with me for being 15 minutes late, but also in
12 how this meeting was conducted. We conducted as what I would
13 consider a ladies and gentlemen matter, and for me that really
14 makes me very, very happy. So, with that, everybody, thank
15 you very much, and I adjourn the meeting.

16 KING: Chairman Gans?

17 GANS: Yes.

18 KING: Before we adjourn, Val King, for the
19 record, I just want to make sure, and this is a question more
20 to our legal counsel, to Henna, the actual motion, should we -
21 we aren't actually upholding summary - the request for summary
22 judgment. We are upholding the fact that let's see -

23 RASUL: Essentially, it's been granted.
24
25

1 KING: Okay, so I just want to make sure that
2 you're good with the motion and that it satisfies the intent
3 of this prehearing conference.

4 RASUL: The fact that what was added to the motion
5 was that it was in favor. It was upholding it in favor of
6 NDEP, that would be considered as granting it.

7 KING: Okay, just wanted to confirm that before
8 we ended the meeting. Thank you.

9 GANS: Henna, thank you. I didn't see you, but
10 I'm glad you're with us.

11 RASUL: Sure, no problem. [laughs] Good to see
12 you, Chairman. [laughs]

13 GANS: Okay, again, this meeting is adjourned and
14 thank you, everybody.

15 KING: Thank you.

16 NUBEL: Thank you, everybody.

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BEFORE THE STATE OF NEVADA
STATE ENVIRONMENTAL COMMISSION

In the Matter of:

ABC RECYCLING LLC'S APPEAL OF
NDEP'S FEBRUARY 6, 2020 DECISION
TO REVOKE THE LATHROP MILL
RECLAMATION PERMIT #0171; AND
FORFEIT OF THE RECLAMATION
SURETY CASH DEPOSIT

ORDER GRANTING THE
NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION'S MOTION FOR
SUMMARY JUDGMENT

On February 15, 2020, ABC Recycling Industries, LLC ("ABC") filed its appeal of the Nevada Division of Environmental Protection's ("NDEP") February 6, 2020, decision to revoke the Lathrop Mill Reclamation Permit #0171 and forfeit of the reclamation surety cash deposit. ABC's grounds of appeal stated that the "final decision was affected by other error of law."

On March 11, 2020, NDEP submitted a Motion for Summary Judgment (the "Motion"). ABC submitted its Opposition to NDEP's Motion on April 24, 2020. NDEP submitted its Reply in Support of its Motion on May 15, 2020. Utilizing its powers under NAC 445B.8913, the State Environmental Commission ("SEC") set a prehearing conference date of June 12, 2020, to rule on NDEP's Motion.

SUMMARY OF HEARING

On June 12, 2020, a three member panel of the SEC convened to rule on NDEP's Motion for Summary Judgment. The SEC Panel consisted of Chairman James Gans and Commissioners Tom Porta and Kacey KC. The three member panel constituted a quorum of that body. The SEC Panel was represented by Senior Deputy Attorney General Henna Rasul.

Appellant, ABC Recycling Industries, LLC, was present and represented by Byron Thomas, Esq. of Law Offices of Byron Thomas, and Appellee, NDEP, was present and

1 represented by counsel, Deputy Attorney General Daniel Nubel of the State of Nevada,
2 Office of the Attorney General.

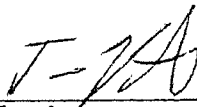
3 The prehearing conference proceeded in due course. ABC and NDEP provided
4 opening statements. Once opening statements had concluded, the SEC Panel asked both
5 parties to answer questions relating to the Motion. The Panel then deliberated on the
6 legal and factual issues raised during the prehearing conference. The Panel found that no
7 genuine issue of material fact existed in this case because both parties agreed that ABC
8 had failed to pay its required annual fee of \$4,166 by April 15, 2019. NDEP gave ABC
9 several opportunities to come into compliance, but ABC admitted that it never availed
10 itself of those opportunities. Under NRS 519.260 and NAC 519A.235, ABC was legally
11 required to pay its annual fee by April 15, 2019. Given the uncontested fact that ABC
12 failed to pay its legally required fee by April 15, 2019, NDEP justifiably utilized its
13 powers under NRS 519A.150(9) to revoke ABC's Permit. Further, NDEP properly
14 forfeited ABC's reclamation surety cash deposit pursuant to NAC 519A.390.

15 During the deliberation, Commissioner KC made a motion to grant NDEP's Motion
16 for Summary Judgment, and thereby enter judgment affirming NDEP's decision to revoke
17 ABC's Permit and forfeit ABC's reclamation surety cash deposit. Commissioner Porta
18 seconded the motion and it passed by unanimous vote of the Panel.

19 CONCLUSION

20 The State Environmental Commission hereby grants the Nevada Division of
21 Environmental Protection's Motion for Summary Judgment. As such, the State
22 Environmental Commission affirms the Nevada Division of Environmental Protection's
23 decision to revoke ABC Recycling LLC's Reclamation Permit #0171 and forfeit of the
24 reclamation surety cash deposit.

25 DATED this 25th day of June, 2020.

26
27 By: 
28 Member
State Environmental Commission

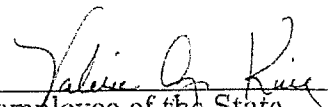
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CERTIFICATE OF SERVICE

I, Valerie King, certify that I am an employee of the State of Nevada, State Environmental Commission, and do hereby certify on this 26th day of June, 2020, I electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and correct copy of the foregoing document, postage prepaid, to the following:

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An employee of the State
Environmental Commission