

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Dec 15 2021 11:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

ABC RECYCLING INDUSTRIES, LLC

Case No. 83027

Petitioner

**District Court Case No. A-20-**  
818624-J

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

**APPEAL**

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

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**APPELLANT'S APPENDIX VOL II**

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

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Stipulation to Extend Time to File Memorandum (Second Request)	12/16/2020	APP0203- APP0206	2
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IN THE DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY

11 ABC RECYCLING INDUSTRIES, )  
12 LLC, )

Case No. A-20-818624-J

13 Petitioner, )

Dept. No. 19

14 vs. )

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

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

24 COMES NOW, the Parties by and through their respective counsel of record  
25 who stipulate as follows:

26  
27 On October 22, 2020, Respondent transmitted the record on appeal. Pursuant to  
28 NRS 233B.133(1) Petitioner's Memorandum of Points and Authorities is due today

1 December 1, 2020. However, due to the illness of counsel for Petitioner, the  
2 parties agree that good cause exists pursuant to NRS 233B.133(6) to extend the  
3 deadline to file Petitioner's Memorandum of Points and Authorities to December  
4 11, 2020.  
5

6 This is the first request and this stipulation is not entered into for any  
7 dilatory or improper purpose.  
8

9 Dated this \_\_1\_\_<sup>th</sup> day of December 2020

10 LAW OFFICES OF BYRON  
11 THOMAS

12 /s/ Byron E. Thomas

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14 Byron E. Thomas Esq.  
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20 Attorney Appellant

OFFICE OF THE ATTORNEY  
GENERAL

/s/ Daniel P. Nubel

Daniel P. Nubel, Esq.  
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100 North Carson Street  
Carson City, Nevada 89701-4717  
Tel: (775) 684-1225  
E: dnubel@ag.nv.gov  
Attorney for Respondents

21 IT IS SO ORDERED

22 Dated this \_\_\_\_ day of December 2020

23 Dated this 7th day of December, 2020

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25 788 A7040205000  
26 DISTRICT COURT JUDGE  
27 William D. Kephart  
28 District Court Judge

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
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6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J  
7 Petitioner(s)  
8 vs. DEPT. NO. Department 19  
9 State Environmental  
10 Commission, Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District  
14 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:

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18 Byron Thomas byronthomaslaw@gmail.com  
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10 Attorney for Petitioner

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IN THE DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY

11 ABC RECYCLING INDUSTRIES, )  
12 LLC, ) Case No. A-20-818624-J  
13 )  
14 Petitioner, ) Dept. No. 19  
15 )

16 vs. )

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19 of the State of Nevada; NEVADA )  
20 DIVISION OF ENVIRONMENTAL )  
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9 Dated this \_\_1\_\_<sup>th</sup> day of December 2020

10 LAW OFFICES OF BYRON  
11 THOMAS

12 /s/ Byron E. Thomas

13  
14 Byron E. Thomas Esq.  
15 Nevada Bar No. 8906  
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18 Tel: 702 747-3103  
19 Facsimile: (702) 543-4855  
20 Attorney Appellant

OFFICE OF THE ATTORNEY  
GENERAL

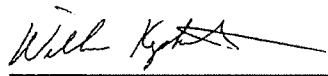
/s/ Daniel P. Nubel

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

21 IT IS SO ORDERED

22 Dated this \_\_\_\_ day of December 2020

23 Dated this 7th day of December, 2020

24 

25 788 A701402A 5000  
26 DISTRICT COURT JUDGE  
27 William D. Kephart  
28 District Court Judge

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1 CSERV

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 ABC Recycling Industries, LLC.,  
7 Petitioner(s)

CASE NO: A-20-818624-J

8 vs.

DEPT. NO. Department 19

9 State Environmental  
10 Commission, Respondent(s)

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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 \_\_<sup>th</sup> day of December 2020

LAW OFFICES OF BYRON  
THOMAS

/s/ Byron E. Thomas, Esq.

Byron E. Thomas Esq.  
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Attorney Appellant

OFFICE OF THE ATTORNEY  
GENERAL

/s/ Daniel P. Nubel, Esq.

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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  
WILLIAM D. KEPHART  
DISTRICT COURT JUDGE  
District Court Judge

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 ABC Recycling Industries, LLC.,  
7 Petitioner(s)

CASE NO: A-20-818624-J

8 vs.

DEPT. NO. Department 19

9 State Environmental  
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**IN THE EIGHTH JUDICIAL DISTRICT, CLARK COUNTY NEVADA**

ABC RECYCLING INDUSTRIES, LLC

Petitioner

**Case No. A-20-818624-J**

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

**APPEAL**

From the Decision of the State Environmental Commission

---

**PETITIONER'S OPENING BRIEF**

---

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

### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

ABC Recycling Industries, LLC

The Law Offices of Byron Thomas has appeared for Petitioner ABC Recycling Industries, LLC in the case and is expected to appear in this Court.

Dated this 28th day of January 2021

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas  
BYRON THOMAS, ESQ.  
Nevada Bar No. 8906  
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Las Vegas, Nevada 89146  
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Attorney for Petitioner

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## **JURISDICTIONAL STATEMENT**

Jurisdiction is proper in this Court pursuant to NRS 233B.130. Petitioner is an aggrieved party to the decision of State Environmental Commission. The decision of the Commission is dated June 26, 2020. The appealed filed on July 27, 2020.

## **ROUTING STATEMENT**

Not Applicable

## **ISSUES PRESENTED**

1. Does the Commission's erroneous ruling that it could not consider the behavior of NDEP constitute a reversible error?
2. Did the Commission's error of law that it could not find that NDEP had acted arbitrarily and capriciously constitute reversible error?
3. Did the Commission's failure to consider Petitioner's request for additional time constitute reversible error?
4. Did the Commission's misapplication of the summary judgment standard constitute reversible error?

## **STATE MENT OF THE CASE**

The Nevada Department of Environmental Protection (hereinafter the “State” or “NDEP”) revoked ABC’s permit. ABC appealed to the Nevada State Environmental Commission (the “Commission”). NDEP then filed a motion for summary judgment (hereinafter the “Motion”). NDEP contended that was entitled to summary judgment because ABC Recycling Industries, LLC (hereinafter “ABC”) has not paid the annual fee for mining. ABC filed an opposition and requested additional time as to compile evidence so as to be able to defend against the Motion for Summary Judgment. The Nevada State Environmental Commission (the “Commission”) granted the Motion for Summary Judgment and did not consider the motion for additional time. Therefore this appeal follows



## STATEMENT OF FACTS

On or about February 6, 2020, NDEP revoked Lathrop Mill Reclamation Permit #0711 (the "Permit"). NDEP 3. NDEP claimed that it was revoking the Permit for non-payment of fees, but in reality NDEP revoked the license in bad faith. Id. NDEP is using the fee issue as a smokescreen to hide the unreasonable withholding of the approval of ABC's reclamation plan. NDEP 74-75. The State originally set the reclamation bond at \$1,260,000, Id. However the actual reclamation costs is more than triple the bond. Id. It is believed that Hillcrest spent approximately \$3,400,000 attempting to reclaim the property. Id. ABC Recycling has spent approximately \$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals. Id.

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

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

ABC has presented a plan to reclaim the land. Id.. The plan reasonably proposes to use green waste to reclaim the property, but NDEP unreasonably withheld approval and then acting in bad faith and ill will it revoked the Permit. Id.

ABC appealed and NDEP moved for summary judgment only on the fee issue. ABC opposed on the bases that it needed more time to solicit evidence of NDEP's wrong doing and because of the nefarious purposes of NDEP the ruling was arbitrary and capricious.

At the hearing it became clear that ABC was correct. The Representative for ABC testified that ABC was trying to comply but they were given a series of conflicting directives by successive representatives of NDEP. NDEP 135-138

In addition, it became clear that more time was needed. The following testimony was provided at the hearing:

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

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

KC: Could you point me to the letter where you're saying that it said – what were you saying, that it was -- that it didn't matter or what – I

read all the letters that were attached here, and I didn't see [inaudible]?

THOMAS: And that was my issue. That's why I wanted more time to gather the evidence to oppose this as required by law by 56F. We were just able to get ahold of this information. We were just able to get ahold of this information and again, this would be a part of the additional evidence that we can produce if 56F was approved theory that if a party needs more time to gather additional evidence [audio cut].

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

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

NDEP 140:3-141-7

At the hearing testimony was provided as follows:

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

THOMAS: Yes, that – was that question directed to Mr. Ford or NDEP?

PORTA: I guess it – well that would be more appropriate for NDEP.

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

PORTA: Okay, that's what I'm trying to get at. I mean, Mr. Thomas, if you're trying to make the argument that, you know, the Division is holding up the plan and you're not NDEP going to pay the fee because of that, but if you haven't even submitted a plan, I'm failing to see the connection here.

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

NDEP 142:8-143-7.

## **SUMMARY OF ARGUMENT**

The Commission created an error of law when it determined that it could find NDEP's actions arbitrary and capricious. The Commission also misapplied the summary judgment standard. It failed to view the evidence in a light most favorable to Petitioner. The Commission even failed to consider facts that were material. Finally, the Commission did not consider Petitioner request to seek additional evidence, even though it was clear that Petitioner needed the additional time to marshal a defense.

## **ARGUMENT**

### **Standard of Review**

This Court should review the orders granting summary judgment de novo to determine whether the evidence properly before the district court "demonstrate[s] that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law. Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007). If a reasonable jury could find for the

non-moving party, summary judgment is inappropriate.<sup>4</sup> Furthermore, a district court cannot make findings concerning the credibility of witnesses or weight of evidence in order to resolve a motion for summary judgment. Borgerson v. Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001).

A. The Commission Misinterpreted the Law When it Disregarded ABC's Arbitrary and Capricious Argument.

A ruling is arbitrary or capricious when:

An arbitrary or capricious exercise of discretion is one “founded on prejudice or preference rather than on reason,” Black's Law Dictionary 119 (9th ed. 2009) (defining “arbitrary”), or “contrary to the evidence or established rules of law,” (omitted) (concluding that “[a] city board acts arbitrarily and capriciously when it denies a license without any reason for doing so”). A manifest abuse of discretion is “[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” (omitted) “is one exercised improvidently or thoughtlessly and without due consideration”; (omitted) (“[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”).

State v. Dist. Ct. (Armstrong), 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011).

The Commission seemed to believe that it did not have the authority to determine that the decision of NDEP was arbitrary and capricious. This was a clearly erroneous interpretation of the law. Mr. Ford was testified that he was given conflicting information by subsequent officials, and that he tried to comply.

NDEP 135-38. He also testified about NDEP acting in bad faith because this matter was really about the dispute over the reclamation fees. Id.

That coupled with the fact that we are talking about \$4,000 when tens of thousands of dollars have been spent and tens of thousands more will have to be spent. Yet, the state did not even provide written responses to the request before pulling the permit. This type of conduct would certainly fall under the type of actions identified in State v. Dist.. Ct.

Thus, this evidence was material and should have viewed in the light most favorable to ABC instead the board did not give any credence to the evidence at all, and thus they are in violation of the summary judgment standard.

B. ABC was Entitled to Additional Time to Challenge The Motion for Summary Judgment.

NRCP 56(d), formerly NRCP56(f) allows a party more time to gather evidence to oppose a summary judgment motion if the party needs additional time to gather evidence to challenge the motion for summary judgment.

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

NRCP 56(f) permits a district court to grant a continuance when a party opposing a motion for summary judgment is unable to marshal facts in support of its opposition. A district court's decision to refuse such a continuance is reviewed for abuse of discretion. Furthermore, a

motion for a continuance under NRCP 56(f) is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact. In Halimi v. Blacketor, this court concluded that a district court had abused its discretion when it denied an NRCP 56(f) motion for a continuance and granted summary judgment in a case where the complaint had been filed only a year before summary judgment was granted. This court noted that summary judgment is improper when a party seeks additional time to conduct discovery to compile facts to oppose the motion. Furthermore, this court held that when no dilatory motive was shown, it was an abuse of discretion to refuse a request for further discovery at such an early stage in the proceedings.

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

In the instant case the parties were early in the litigation. NAC 445B.8913 provides as follows:

1. The Commission may, upon its own motion or a motion made by a party, conduct a prehearing conference to:
  - (a) Formulate, simplify or limit the issues involved in a hearing;
  - (b) Obtain admissions of fact or any stipulation of the parties which will avoid unnecessary proof;
  - (c) Arrange for the exchange of proposed exhibits or prepared expert testimony;
  - (d) Identify the witnesses and the subject matter of their expected testimony and, if necessary, limit the number of witnesses or the scope of their testimony;
  - (e) Rule on any pending prehearing motions or matters;
  - (f) Establish a schedule for the filing of motions or the submission of briefs; or
  - (g) Consider any other action or procedure which may expedite the orderly conduct and disposition of the proceedings or a settlement of the matter.

The Commission decided to conduct the prehearing conference. It could have allowed ABC time to gather more evidence to present its case. In addition, ABC explained how the delay would allow it to defeat NDEP's summary judgment motion. The need for more time was made clear during the hearing:

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

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

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

THOMAS: And that was my issue. That's why I wanted more time to gather the evidence to oppose this as required by law by 56F. We were just able to get ahold of this information. We were just able to get ahold of this information and again, this would be a part of the additional evidence that we can produce if 56F was approved theory that if a party needs more time to gather additional evidence [audio cut].

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

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



NDEP 140:3-141-7. In addition, the Commission seemed to indicate that they were amenable to the argument if plans were actually submitted and there was a dispute as to whether the Plans had been submitted:

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

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

THOMAS: Yes, that – was that question directed to Mr. Ford or NDEP?

PORTA: I guess it – well that would be more appropriate for NDEP.

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

PORTA: Okay, that's what I'm trying to get at. I mean, Mr. Thomas, if you're trying to make the argument that, you know, the Division is holding up the plan and you're not NDEP going to pay the fee because of that, but if you haven't even submitted a plan, I'm failing to see the connection here.

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

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NDEP 142:8-143-7 However NDEP does not even address the request for additional time. NDEP 171-73. Therefore, the Commission erred.

Dated this 28<sup>th</sup> day of January 2021.

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas  
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Attorney for Appellant

## **CERTIFICATE OF COMPLIANCE**

The below-signed hereby certifies that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 7119 words. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

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I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28<sup>th</sup> day of January 2021

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas  
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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Eighth Judicial District Clark County Nevada by using the Court's electronic service system on January 28, 2021. =A copy of the foregoing shall be electronically transmitted from the Court to the email addresses on file for each of the following:

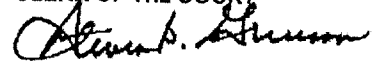
#### **Attorneys for Respondents**

Dated this 28th day of January 2021.

*/s/ Byron Thomas*

---

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ANSB

**DISTRICT COURT  
CLARK COUNTY, 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.

Case No. A-20-818624-J

Dept. No. 19

**RESPONDENT NDEP'S ANSWERING BRIEF**

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## POINTS AND AUTHORITIES

### I. INTRODUCTION

The State Environmental Commission's (the "Commission") order upholding the Nevada Division of Environmental Protection's ("NDEP") decision to revoke ABC Recycling Industries, LLC's ("ABC") mining reclamation permit for failure to pay its required annual fee must be affirmed. 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). It is an undisputed fact that ABC failed to pay its statutorily required annual permit fee. NDEP granted ABC multiple deadline extensions to pay the annual fee, but ABC still refused to comply with the legal requirement. Given that no genuine issue of material fact existed, the Commission correctly decided that NDEP had not committed an error of law when it

revoked ABC's permit and therefore granted summary judgment in NDEP's favor.

ABC contends that the Commission committed reversible error by denying ABC's request for additional time to collect evidence prior to ruling on NDEP's Motion for Summary Judgment. As noted in the briefing to the Commission, "a motion for continuance under [NRCP 56(d)] is appropriate only when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117–118 (2005). In this instance, the Commission correctly concluded that additional time would not change the dispositive fact of the case—ABC failed to pay its statutorily required fee. This fact was undisputed, and no amount of time to collect evidence would change it. For this reason, the Commission's decision to deny ABC's request for additional time to conduct discovery was supported by fact and law.

## II. STATEMENT OF THE ISSUES

1. Is the Commission's action to uphold NDEP's decision to revoke ABC's permit supported by substantial evidence given the

undisputed fact that ABC failed to pay its statutorily required annual fee?

2. Did the Commission arbitrarily abuse its discretion in denying ABC's request for additional time to conduct discovery despite ABC not disputing that it had failed to pay its required annual fee?

### III. STATEMENT OF THE FACTS

On June 9, 2015, NDEP transferred reclamation permit #0171 (the "permit") to ABC for the operation of Lathrop Mill. NDEP 43. As the permittee, ABC was required to submit an annual permit fee of \$4,166 to NDEP by April 15, 2019. NDEP 43–44. ABC failed to pay the fee by the April 15 deadline, and NDEP issued a Notice of Noncompliance and Order on August 13, 2019. NDEP 47. The Notice directed ABC to pay the fee by September 13, 2019. *Id.* ABC did not respond to the Notice of Noncompliance and Order, and NDEP sent a second Notice requiring payment by October 11, 2019. NDEP 53. Although ABC acknowledged that it received the Notice, it still failed to make its annual permit fee payment. NDEP 44.

On November 21, 2019, NDEP sent ABC a letter setting a hearing date for January 10, 2020, regarding possible suspension or revocation of

ABC's reclamation permit and forfeiture of ABC's reclamation cash deposit due to its failure to pay its annual permit fee. NDEP 59. At the hearing, ABC's representative, Robert Ford, informed NDEP that ABC was reluctant to put any additional money into the property, which included paying the annual permit fee. NDEP 45. At the end of the hearing, NDEP provided ABC with a final deadline of January 24, 2020, to submit its annual permit fee. *Id.*

Despite NDEP's many attempts to gain compliance, ABC still failed to pay its \$4,166 annual permit fee. *Id.* For that reason, NDEP sent a letter to ABC on February 6, 2020, informing ABC that NDEP made the decision to revoke its permit and that ABC's cash deposit would be forfeited to reclaim the site. NDEP 62.

#### **IV. STATEMENT OF THE CASE**

On February 15, 2020, ABC filed its appeal of NDEP's February 6, 2020, decision to revoke its permit and forfeit its reclamation surety cash deposit. NDEP 1–2. ABC's grounds for appeal stated that the "final decision was affected by other error of law." NDEP 1. On March 11, 2020, NDEP submitted its Motion for Summary Judgment. NDEP 34. ABC submitted its Opposition to NDEP's Motion on April 24, 2020. NDEP 69.

NDEP submitted its Reply in Support of its Motion on May 15, 2020. NDEP 108. Utilizing its powers under NAC 445B.8913, the Commission set a prehearing conference date of June 12, 2020, to rule on NDEP's Motion. NDEP 118.

On June 12, 2020, a three-member panel of the Commission convened to rule on NDEP's Motion for Summary Judgment. Ultimately, the Commission found that no genuine issue of material fact existed because it was undisputed that ABC failed to pay its required annual fee of \$4,166 by April 15, 2019. *See* the Commission's Order Granting NDEP's Motion for Summary Judgment at NDEP 172. The Commission recognized that NDEP had given ABC several opportunities to come into compliance, but ABC failed to do so. *Id.* The Commission acknowledged that under NRS 519A.260 and NAC 519A.235, ABC was legally required to pay its annual fee by April 15, 2019. Finally, the Commission concluded that "NDEP justifiability utilized its powers under NRS 519A.150(9) to revoke ABC's Permit," and properly "forfeited ABC's reclamation surety cash deposit pursuant to NAC 519A.390." *Id.* As such, the Commission granted NDEP's Motion for Summary Judgment and thereby affirmed NDEP's decision to revoke ABC's permit and ABC

subsequently filed a Petition for Judicial Review in this Court challenging that decision. *Id.*

## V. STANDARD OF REVIEW

“The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid.” NRS 233B.135(2). “The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact.” NRS 233B.135(3). When reviewing an administrative agency’s decision, a district court shall “review factual findings for clear error or an arbitrary abuse of discretion, only overturning if they are not supported by substantial evidence.” *Clark Cty. v. Bean*, 136 Nev. Adv. Op. 65, 473 P.3d 1030, 1032 (2020) (citing *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). “Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency’s conclusion.” *Law Offices of Barry Levinson v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). “It is reasonable to conclude that in enacting NRS 233B.135 the legislature intended for the district court to have the power to reverse and remand a decision for a factual determination *where there is no evidence on the*

*record to decide the issue.” Gen. Motors v. Jackson*, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) (emphasis added).

## VI. ARGUMENT

### A. The Commission properly granted summary judgment in NDEP’s favor because ABC did not contest that it failed to pay its statutorily required annual fee, and NDEP acted within its authority in revoking ABC’s permit based on the nonpayment of this fee

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

NRS 519A.260 requires each operator holding a reclamation permit to, on or before April 15 of each year, pay NDEP a fee based on the amount of land that has been disturbed by mining operations or exploration projects engaged in by the operator and not reclaimed.

Additionally, NAC 519A.235 establishes a regulatory fee due on April 15 of each year that requires each mining operation for which a permit has been issued to submit a fee based on the total amount of affected land. Finally, NRS 519A.150(9) grants NDEP the authority to revoke a permit for violation of a statute or a regulation adopted by the Commission.

Here, the Commission granted summary judgment in favor of NDEP because there was no genuine issue as to the only material fact in the case, whether ABC paid its required annual fee. During the hearing, the Commission observed that the facts of the case made clear that ABC did not pay its annual fee. NDEP 165 (Commissioner Porta stating: “I think it’s clear they did not pay this fee. It’s required by the regulations and statutes, and that’s what we have to determine today. I didn’t see anything else that was presented evidence-wise or information or anything in my packet that shows otherwise.”). ABC has not disputed this fact throughout the case. In fact, in its opposition to NDEP’s Motion, ABC essentially admitted it. *See* NDEP 71 (“it makes no sense for ABC to pay the fees while the State continues to unreasonably without hold approval of the reclamation plan”). Additionally, ABC admitted that it never actually submitted the reclamation plan that it had accused NDEP



of unreasonably withholding approval of. *See* NDEP 134 (ABC's attorney stating: "And I admit that maybe the reclamation plan had not actually been submitted.").

Given that ABC had failed to pay its annual fee, the Commission determined that NDEP acted within its legal authority in deciding to revoke the permit. *See* NRS 519A.150(9) (granting NDEP authority to revoke for violation of a statute or 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). The Commission acknowledged the unambiguous requirement that the annual fee be paid. *See* NDEP 165 (Chairman Gans stating: "There's an issue here, and the issue is, I believe the permittee has to pay that annual fee, regardless of anything else. It's in the law and you're required by it. The permittees should know that when they pick up a permit, [they] pick up another responsibility. It just almost goes without saying."). *See also* NDEP 164 (Commissioner Porta stating: "When they sign on or any entity signs on

with a permit with the division, they're required to meet the requirements that are in the permit, and part of that is to pay the fees, submit reports, do testing and things of that nature. And I think everything we've heard today shows that this fee was not paid to the Division as required."). As such, the Commission found that NDEP lawfully utilized its power under NRS 519A.150(9) to revoke ABC's permit. *See* NDEP 172.

Without the facts or law on its side, ABC makes unsupported claims of "subtext." Essentially, ABC appears to be irrationally speculating that NDEP revoked ABC's permit for reasons other than the nonpayment of fees. However, NDEP's basis and reasoning for revoking ABC's permit is clear and uncontroverted on the face of the record. NDEP's correspondence with ABC prior to revoking the permit make clear that NDEP's basis for revocation was based on ABC's nonpayment of its required annual fee. This fact is clearly established in NDEP's correspondence with ABC. *See* NDEP 47, NDEP 53, NDEP 59 and NDEP 62. Thus, whether ABC paid its fee was the only material fact necessary for the Commission to decide whether NDEP acted lawfully in revoking the permit.

Ultimately, the Commission's decision to uphold NDEP's revocation of ABC's permit is supported by substantial evidence. As stated above, "substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Law Offices of Barry Levinson v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008). In this instance, it was certainly reasonable for the Commission to find that no genuine issue of material fact existed regarding ABC's nonpayment of its annual fee. Further, the Commission's decision that NDEP acted properly under the law is supported by the applicable statutes and regulations regarding mining reclamation permits.

**B. The Commission properly denied ABC's request for additional time under NRCP 56(d) because it would not have led to the creation of a genuine issue of material fact**

In its Opposition to NDEP's Motion, ABC requested that it be given more time to oppose summary judgment under Nevada Rule of Civil Procedure 56(d). NDEP 71. That rule states that a court may allow additional time to obtain discovery when the nonmovant shows by affidavit or declaration that it cannot present facts essential to justify its opposition. But, "a motion for continuance under [NRCP 56(d)] is appropriate only when the movant expresses *how further discovery*

*will lead to the creation of a genuine issue of material fact.”* *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117–118 (2005) (emphasis added). In this instance, ABC never demonstrated that additional time would lead to the creation of a genuine issue of material fact. The only material fact in this case was ABC’s failure to pay its statutorily required annual fee. ABC’s Opposition admitted that it did not pay the fee. *See* NDEP 71 (“it makes no sense for ABC to pay the fees while the State continues to unreasonably without hold approval of the reclamation plan”). No amount of time would change this uncontested fact. Presented with this evidence, the Commission properly concluded that an extension of time would not lead to the creation of any genuine issues of material fact. NDEP 167–168 (Chairman Gans stating: “I’d like to add to that that ABC’s request under 56(f) is not germane to what this panel has to consider.”). The Commission’s decision was entirely appropriate and supported by substantial evidence.

## VII. CONCLUSION

For these reasons, the Commission did not err in granting NDEP’s Motion for Summary Judgment and upholding NDEP’s February 6, 2020, decision to revoke the Lathrop Mill Reclamation Permit #0171. ABC

failed to set forth any facts or law showing that NDEP acted outside the scope of its jurisdiction and authority. ABC failed to show any evidence that it had paid its annual fee—in fact, it did not even dispute that fact. The Commission properly noted that NDEP gave ABC many chances to remedy its noncompliance, but that ABC had refused to take advantage of those opportunities. ABC's noncompliance in paying its annual fee violated NRS 519A.260 and NAC 519A.235. Based on these undisputed facts and law, it is clear that the Commission's decision to uphold NDEP's revocation is supported by substantial evidence. Therefore, NDEP requests that this Court affirm the Commission's decision.

RESPECTFULLY SUBMITTED this 1st day of March, 2021.

AARON D. FORD  
Attorney General

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

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 10 in 14 pitch Century Schoolbook.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 2,560 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in

conformity with the requirements of the Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED this 1st day of March, 2021.

AARON D. FORD  
Attorney General

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

### **CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 1st day of March, 2021, I served a true and correct copy of the foregoing RESPONDENT NDEP'S ANSWERING BRIEF, 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:

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LAW OFFICES OF BYRON THOMAS  
E: byronthomaslaw@gmail.com

/s/ Dorene A. Wright

*Heather S. Lewis*  
CLERK OF THE COURT

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 ABC RECYCLING INDUSTRIES, LLC, et. al.,  
5 Plaintiff(s)

6 vs.  
7 STATE ENVIRONMENTAL COMMISSION, et.  
8 al.,

9 Defendant(s)

CASE NO.: A-20-818624-J  
DEPT. NO.: 1

10 **ORDER SETTING BRIEFING SCHEDULE AND**  
11 **JUDICIAL REVIEW HEARING**

12 The above entitled action is a petition for judicial review and the court, after having  
13 reviewed the file and good cause appearing.

14 **IT IS HEREBY ORDERED:**

15 1. The Petitioner(s) shall have to and including March 31, 2021, within which to  
16 file their Reply Brief.

17 2. All briefs must comply with appellate brief format according to NRCP 28. NRS  
18 233B.133(5), and shall clearly and concisely set forth the position asserted.

19 3. This matter is set on for hearing on the civil law & motion calendar, on April  
20 15, 2021, at 9:30 a.m., in District Court Department I, Courtroom 16A, at the Regional Justice  
21 Center, 200 Lewis Avenue, Las Vegas, Nevada. Parties are to appear via Bluejeans (See  
22 instructions below).

Dated this 10th day of March, 2021

*Brita Yeager*

23 **BLUEJEANS INSTRUCTIONS:**

24 Meeting URL: <https://bluejeans.com/234538947>  
25 Meeting ID: 234 538 947

26 Want to dial in from a phone?

27 Dial one of the following numbers:

28 +1.408.419.1715 (United States(San Jose))

+1.408.915.6290 (United States(San Jose))

Enter the meeting ID followed by #

D8B 477 AAD7 09DC  
Brita Yeager  
District Court Judge



1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5	6 ABC Recycling Industries, LLC.,	CASE NO: A-20-818624-J
7	Petitioner(s)	
8	vs.	DEPT. NO. Department 1
9	State Environmental	
10	Commission, Respondent(s)	

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 3/10/2021

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**IN THE DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY**

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

**ORDER ON MOTION TO EXTEND THE TIME FOR ABC RECYCLING  
TO FILE OPENING MEMORANDUM OF POINTS AND AUTHORITIES  
(THIRD REQUEST)**

This matter came before the Court on ABC Recycling Industries, LLC's  
motion to extend the deadline to file its Opening Brief (the "Motion"). The Court  
having reviewed the Motion and the papers and pleadings on file and for good cause  
finds as follows:

1           **IT IS THEREFORE ORDERED** that Petitioner's Motion is granted in full;

2           **IT IS FURTHER ORDERED THAT** that Petitioner shall have until January 28, 2021 to  
3 file its Opening Memorandum of Points and Authorities

4           **IT IS SO ORDERED.**

5                           Dated: \_\_\_\_\_

Dated this 16th day of March, 2021

*Bita Yeager*

DISTRICT COURT JUDGE

518 A11 AC29 977B  
Bita Yeager  
District Court Judge

10           DATED this \_15<sup>th</sup> day of March 2021,

11           **LAW OFFICES OF BYRON THOMAS**

12           \_\_\_\_\_  
13           /s/ Byron E. Thomas

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**EXHIBIT A**

1                   **DECLARATION OF BYRON THOMAS IN SUPPORT OF MOTION FOR**  
2                                   **ADDITIONAL TIME**

3       I have been susceptible to upper respiratory infections since a bout of pneumonia  
4 several years ago. In January of 2020 I fell very ill, to a upper respiratory infection,  
5 and was not able to work for several weeks. I have never fully recovered from the  
6 illness. In addition, I was in two automobile accidents that have aggravated his  
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8

9           I have been assisting elderly family members with navigating the byzantine  
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12 Covid, especially with this new strain of virus that seems more transmissible and  
13 more deadly.  
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16          Counsel back issues have flared up again making it extremely difficult to  
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18 counsel simply has not been able to complete the memorandum of points and  
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26           The additional three (3) day delay should not prejudice the Respondents. I  
27 realize that the Court needs finality and this will be ABC's final request.  
28

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

2 Executed this 25 day of January, 2020.

3 /s/ Byron E. Thomas

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6 Byron E. Thomas, Esq.  
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1 CSERV

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
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6 ABC Recycling Industries, LLC., 7 Petitioner(s) 8 vs. 9 State Environmental 10 Commission, Respondent(s)	CASE NO: A-20-818624-J DEPT. NO. Department 1
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11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing 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:

15 Service Date: 3/16/2021

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18 Byron Thomas	byronthomaslaw@gmail.com

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2 LAW OFFICES OF BYRON THOMAS  
3 BYRON E. THOMAS, ESQ.  
4 Nevada Bar No. 8906  
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6 Las Vegas, Nevada 89146  
7 Phone: 702 747-3103  
8 Facsimile: (702) 543-4855  
9 Byronthomaslaw@gmail.com  
10 Attorney for Petitioner

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**IN THE DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY**

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

**ORDER ON MOTION TO EXTEND THE TIME FOR ABC RECYCLING  
TO FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES  
(FIRST REQUEST)**

This matter came before the Court on ABC Recycling Industries, LLC's  
motion to extend the deadline to file its Reply Brief (the "Motion"). The Court  
having reviewed the Motion and the papers and pleadings on file and for good cause  
finds as follows:



1           **IT IS THEREFORE ORDERED** that Petitioner's Motion is granted in full;

2           **IT IS FURTHER ORDERED THAT** that Petitioner shall have until April 9, 2021 to file  
3 its Reply Memorandum of Points and Authorities

4           **IT IS SO ORDERED.**

5                               Dated: \_\_\_\_\_

Dated this 9th day of April, 2021

6   *Brita Yeager*  
7   \_\_\_\_\_  
8   DISTRICT COURT JUDGE

9   0C9 B2D 7994 15C0  
10    Brita Yeager  
11    District Court Judge

12                               DATED this 7<sup>th</sup> day of April 2021,

13           **LAW OFFICES OF BYRON THOMAS**

14                               /s/ Byron E. Thomas

15           BYRON THOMAS, ESQ.  
16           Nevada Bar No. 8906  
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**EXHIBIT A**

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

2 Executed this 25 day of January, 2020.

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1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
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6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J  
7 Petitioner(s)  
8 vs. DEPT. NO. Department 1  
9 State Environmental  
10 Commission, Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**  
12

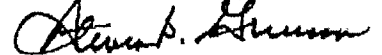
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
15 system to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 4/9/2021

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**IN THE EIGHTH JUDICIAL DISTRICT, CLARK COUNTY 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

**Case No. A-20-818624-J**

**APPEAL**

From the Decision of the State Environmental Commission

---

**PETITIONER'S REPLY BRIEF**

---

LAW OFFICES OF BYRON THOMAS

BYRON THOMAS, ESQ.

BAR NO: 8906

*Attorney for*

*ABC RECYCLING INDUSTRIES, LLC*

### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

ABC Recycling Industries, LLC

The Law Offices of Byron Thomas has appeared for Petitioner ABC Recycling Industries, LLC in the case and is expected to appear in this Court.

Dated this 28th day of January 2021

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas  
BYRON THOMAS, ESQ.  
Nevada Bar No. 8906  
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## STATEMENT OF FACTS

On or about February 6, 2020, NDEP revoked Lathrop Mill Reclamation Permit #0711 (the "Permit"). NDEP 3. NDEP claimed that it was revoking the Permit for non-payment of fees, but in reality NDEP revoked the license in bad faith. Id. NDEP is using the fee issue as a smokescreen to hide the unreasonable withholding of the approval of ABC's reclamation plan. NDEP 74-75. The State originally set the reclamation bond at \$1,260,000, Id. However the actual reclamation costs is more than triple the bond. Id. It is believed that Hillcrest spent approximately \$3,400,000 attempting to reclaim the property. Id. ABC Recycling has spent approximately \$1,000,00,000 not counting costs such as attorney fees and the costs of other professionals. Id.

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

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

ABC has presented a plan to reclaim the land. Id. The plan reasonably proposes to use green waste to reclaim the property, but NDEP unreasonably withheld approval and then acting in bad faith and ill will it revoked the Permit. Id.

ABC appealed to the State Environmental Commission (the “Commission”) and NDEP moved for summary judgment only on the fee issue. ABC opposed on the bases that it needed more time to solicit evidence of NDEP’s wrong doing and because of the nefarious purposes of NDEP the ruling was arbitrary and capricious.

At the hearing it became clear that ABC was correct. The Representative for ABC testified that ABC was trying to comply but they were given a series of conflicting directives by successive representatives of NDEP. NDEP 135-138

In addition, it became clear that more time was needed. The following testimony was provided at the hearing:

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

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

KC: Could you point me to the letter where you’re saying that it said – what were you saying, that it was -- that it didn’t matter or what – I

read all the letters that were attached here, and I didn't see [inaudible]?

THOMAS: And that was my issue. That's why I wanted more time to gather the evidence to oppose this as required by law by 56F. We were just able to get ahold of this information. We were just able to get ahold of this information and again, this would be a part of the additional evidence that we can produce if 56F was approved theory that if a party needs more time to gather additional evidence [audio cut].

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

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

NDEP 140:3-141-7

At the hearing testimony was provided as follows:

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

THOMAS: Yes, that – was that question directed to Mr. Ford or NDEP?

PORTA: I guess it – well that would be more appropriate for NDEP.

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

PORTA: Okay, that's what I'm trying to get at. I mean, Mr. Thomas, if you're trying to make the argument that, you know, the Division is holding up the plan and you're not NDEP going to pay the fee because of that, but if you haven't even submitted a plan, I'm failing to see the connection here.

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

NDEP 142:8-143-7.

## **ARGUMENT**

### **Standard of Review**

This Court should review the orders granting summary judgment de novo to determine whether the evidence properly before the district court “demonstrate[s] that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law. Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007). If a reasonable jury could find for the non-moving party, summary judgment is inappropriate.<sup>4</sup> Furthermore, a district court cannot make findings concerning the credibility of witnesses or weight of evidence in order to resolve a motion for summary judgment. Borgerson v. Scanlon, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001).

#### **A. ABC Raised Material Issues of Fact, and Therefore the Commission Should not Have Granted Summary Judgment.**

ABC contended that NDEP was acting improperly and the Commission had the authority to determine that NDEP had acted with prejudice bias or ill will,

and it could thus, overturn the decision of NDEP regardless of whether the fees were paid. Commission and NDEP's (collectively referred to as "Respondents") almost completely ignore this argument, and claims that NDEP's reason for revoking the permit was clear and uncontroverted on the record. This is simply not the case as pointed out in the Opening Brief, several board members raised questions about prior dealings of NDEP and ABC. Mr. Ford testified that promises were made to him by the old regime, and then broken. So, there is evidence in the record of NDEP acting in bad faith.

The issue of whether NDEP acted arbitrarily is certainly material:

[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Wood v. Safeway, Inc., 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). The substantive law regarding arbitrary and capricious behavior is as follows:

An arbitrary or capricious exercise of discretion is one "founded on prejudice or preference rather than on reason," Black's Law Dictionary 119 (9th ed. 2009) (defining "arbitrary"), or "contrary to the evidence or established rules of law," (omitted) (concluding that "[a] city board acts arbitrarily and capriciously when it denies a license without any reason for doing so"). A manifest abuse of discretion is "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." (omitted) "is one exercised improvidently or thoughtlessly and without due consideration"; (omitted) ("[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is

overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”).

State v. Dist. Ct. (Armstrong), 127 Nev. 927, 931–32, 267 P.3d 777, 780 (2011).

So, a clearly erroneous misinterpretation of the law or rule is material. In the instant case it appears that the Commission misperceived its authority. The Commission seemed to believe that it did not have the authority to determine that the decision of NDEP was arbitrary and capricious. This was a clearly erroneous interpretation of the law. A decision is also arbitrary and capricious if the judgment is manifestly unreasonable or the result of partiality, prejudice, bias or ill will. Thus, evidence concerning prejudice bias or ill will is certainly material.

Contrary to the Respondents’ position the evidence was material and should have been viewed in the light most favorable to ABC, instead the Commission did not give any credence to the material evidence, and thus the Commission’s decision violated the summary judgment standard.

B. ABC was Entitled to Additional Time to Challenge The Motion for Summary Judgment.

Respondents only argument regarding the need for additional discovery will lead to the creation of a genuine issue of material fact. ABC has shown that discovery regarding whether NDEP was acting with malice, ill will or bad intent is

material. ABC needs additional discovery to determine identify more of these material facts. Moreover, if the Court were to adopt Respondents' argument than every order issued by NDEP would be beyond review as being arbitrary or capricious.

Dated this 9<sup>th</sup> day of April 2021.

LAW OFFICES OF BYRON THOMAS

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Attorney for Appellant

## **CERTIFICATE OF COMPLIANCE**

The below-signed hereby certifies that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2243 words. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

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I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 9<sup>th</sup> day of April 2021

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas  
BYRON THOMAS, ESQ.  
Nevada Bar No. 8906  
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(702) 747-3103  
byronthomaslaw@gmail.com  
Attorney for Appellant

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Eighth Judicial District Clark County Nevada by using the Court's electronic service system on April 9, 2021. A copy of the foregoing shall be electronically transmitted from the Court to the email addresses on file for each of the following:

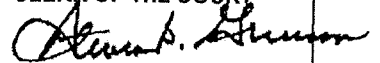
#### **Attorneys for Respondents**

Dated this 9th day of April 2021.

*/s/ Byron Thomas*

---

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1 **RTRAN**

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4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**  
6

7 **ABC RECYCLING INDUSTRIES, )**  
8 **LLC., )**

9 **Petitioner, )**

**CASE NO. A-20-818624-J**  
**DEPT. NO. 1**

10 **vs. )**

11 **STATE ENVIRONMENTAL )**  
12 **COMMISSION, )**

13 **Respondent. )**

14  
15 **BEFORE THE HONORABLE BITA YEAGER, DISTRICT JUDGE**  
16 **THURSDAY, APRIL 15, 2021 AT 10:14 A.M.**

17 **RECORDER'S TRANSCRIPT RE:**  
18 **ARGUMENT ON ORDER SETTING BRIEFING SCHEDULE AND JUDICIAL**  
19 **REVIEW HEARING**

20 **APPEARANCES:**

21 **FOR THE PETITIONER: BYRON E. THOMAS, ESQ.**

22 **FOR THE RESPONDENT: DANIEL P. NUBEL, ESQ.**  
23  
24

25 **Recorded by: LISA A. LIZOTTE, COURT RECORDER**

1 (THURSDAY, APRIL 15, 2021 AT 10:14 A.M.)

2 THE COURT: Let me do ABC Recycling Industries, LLC versus  
3 State Environmental Commission. Do we have Mr. Thomas and Mr. Nubel on?

4 MR. NUBEL: Yes, Your Honor. This is Dan Nubel on behalf of the  
5 Division of Environmental Protection.

6 THE COURT: Okay. Is Mr. Thomas –

7 MR. THOMAS: This is Byron Thomas on behalf of ABC Recycling.

8 THE COURT: Okay. Thank you. So this is the argument regarding  
9 the petition based on, let's see, the NDEP's – or actually it was the Commission's  
10 – the decision by the State Environmental Commission upholding the NDEP's  
11 decision regarding the motion for summary judgment; is that correct?

12 MR. THOMAS: Yes, Your Honor.

13 THE COURT: Okay. Is there anything that either party would like to  
14 particularly emphasize regarding any of the arguments that they made in the  
15 pleadings?

16 MR. THOMAS: Your Honor, there are just two points, and then I'll  
17 rely on the briefing. One is that the Commission seemed to think that it could not  
18 review a decision of NDEP based on whether it being arbitrary and capricious. If  
19 that's allowed, then no judgment or ruling of NDEP can ever be reviewed by the  
20 Commission when it was done in bad faith or with ill intent.

21 Two, once you establish that arbitrary and capricious is a  
22 standard of review and then you start looking into what's material or not, the fact  
23 that – the type of behavior that the State engaged in is material, and we should  
24 have been given the opportunity to delve into that behavior with more discovery,  
25 and that's all I have, Your Honor.

1 THE COURT: Okay. Well, let me ask because it's my  
2 understanding that the revocation was due to the annual permit fee not being  
3 paid. What would discovery have accomplished if you – regarding that issue?

4 MR. THOMAS: Well, one, we also – we believe that it would have  
5 shown that other promises and – were made to my client concerning compliance  
6 that would have borne on the decision. We also would believe that that would  
7 have shown that there was bad will in the underlying decision of bad faith in their  
8 ruling.

9 THE COURT: Well, so it's my understanding that – so there was a  
10 notice of non-compliance order August 13<sup>th</sup>, 2019 to pay by September 13<sup>th</sup>,  
11 2019, a second notice to be paid October 11<sup>th</sup>, 2019. Then there was notification  
12 of a hearing where Robert Ford attended the hearing which was on January 10<sup>th</sup>,  
13 and both in the notice of the hearing and at the hearing it appears that it was very  
14 clear that they were told that if that fee was not paid that they'd be looking at the  
15 revocation, so what other promises are you talking about as far as some sort of,  
16 you know, reliance that they would have had?

17 MR. THOMAS: Well, one of the – one of the promises was that –  
18 that they would work out the reclamation plan without – before the fees would  
19 become an issue, that the whole issue that they really had was how to work out  
20 the reclamation plan, and we think that taking the depositions or at least getting  
21 email correspondence between those officials at that time – because, again, this  
22 –the people who made the decision to revoke the petition were not the same  
23 people who Mr. Ford was dealing with all along.

24 And we believe that if we were given the opportunity to take  
25 more discovery on that, we would find out that there was reliance that Mr. Ford –

1 or my client was relying on decisions and statements that they were making, and  
2 we believe that they were – you know, they would be obligated by those  
3 decisions and state (audio distortion) --

4 THE COURT: Okay. Thank you, Mr. Thomas. Mr. Nubel?

5 MR. NUBEL: Yes, Your Honor. I'll just add a couple of short things  
6 based on what was offered by Mr. Thomas, and the first and most important is  
7 that reclamation plan was never submitted to NDEP by ABC, and that information  
8 is found within a declaration that we submitted along with our motion for  
9 summary judgment on NDEP 116.

10 And then it was actually also admitted in the hearing, which  
11 you can see by the minutes, where counsel said, I admit that maybe the  
12 reclamation plan had not actually been submitted, but there were ongoing  
13 negotiations between the parties concerning reclamation, so there had never  
14 actually been a plan submitted that NDEP was apparently withholding approval  
15 of as they're alleging.

16 And the last thing I'll add is that the reasoning for not paying  
17 the fee is actually stated by Mr. Ford himself who was the Officer for ABC who  
18 testified at the hearing, and on NDEP 138 within the record you can see that he  
19 said, but for me to just pay \$4,000 a year when I could be done with this project  
20 two years ago if they stopped changing management. So he apparently was  
21 upset that, you know, there had been changes within NDEP with new employees  
22 coming in, and that was his reasoning for not paying the fee which obviously  
23 under statute and regulation is not allowed, so unless you have any additional  
24 questions, Your Honor, that's all I'll add.

25

1 THE COURT: I don't. So I will note that the standard for reviewing  
2 administrative action is abuse of discretion, so I'm limited to determining whether  
3 or not there is substantial evidence in the record to support the determination.  
4 As I mentioned before, it was apparent from the record that ABC had been given  
5 multiple notices regarding the non-compliance with the annual permit fee of  
6 \$4,166 that was required under – so under the Nevada Revised Statute  
7 519A.260 and also Nevada Administrative Code 519A.235.

8 And as far as notice, there was multiple instances of notice as  
9 well as the hearing that I mentioned which Mr. Ford attended and was explicitly  
10 told that if the payment was not made by January 24<sup>th</sup>, 2020, which was the final  
11 deadline to pay the fee, that the permit would be revoked.

12 And based on that, based on the non-payment of the fee, I do  
13 not find that the Commission erred in granting the NDEP's motion or summary  
14 judgment and upholding NDEP's February 6<sup>th</sup>, 2020 decision to revoke the  
15 Lathrop Mill Reclamation Permit Number 0171 based on the substantial evidence  
16 that there was the annual permit fee that had not been paid.

17 And I don't find that it was error to not allow discovery, if I'm  
18 going down further on that, because it had to do with basically a payment or a  
19 non-payment of the fee. So I'm going to deny the petition, and I will ask Mr.  
20 Nubel, will you prepare an order reflecting that?

21 MR. NUBEL: Absolutely, Your Honor. Thank you.

22 THE COURT: Thank you, gentlemen.

23 MR. THOMAS: Thank you, Your Honor.

24 (Whereupon, the proceedings concluded.)

25 \* \* \* \* \*

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



LISA A. LIZOTTE  
Court Recorder



*Heather S. Smith*  
CLERK OF THE COURT

1 ORDD

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 ABC RECYCLING INDUSTRIES, LLC,

Case No. A-20-818624-J

5 Petitioner,

Dept. No. 1

6 vs.

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

11 Respondents.

12 ORDER DENYING PETITION FOR JUDICIAL REVIEW

13 This case comes before the Court pursuant to ABC Recycling Industries, LLC's  
14 (ABC) Petition for Judicial Review, which was filed on July 27, 2020. ABC's Petition for  
15 Judicial Review challenges the State Environmental Commission's decision to affirm the  
16 Nevada Division of Environmental Protection decision to revoke ABC's Reclamation  
17 Permit #0171. The case was fully briefed by all parties. On April 15, 2021, the Court heard  
18 oral argument by all parties. After reviewing the relevant papers and hearing the  
19 arguments of the parties, the Court finds, concludes, and rules as follows:

20 Based on the Court's review of the record and the law, substantial evidence in the  
21 record supports the State Environmental Commission's decision in this case. The record  
22 demonstrates that the State Environmental Commission properly concluded that the  
23 Nevada Division of Environmental Protection did not commit an error of law in revoking

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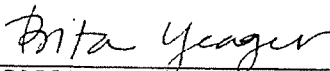
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1 ABC's Reclamation Permit #0171 based on the undisputed fact that ABC did not pay its  
2 annual fee as required by statute and regulation.

3 Therefore, the Court hereby **DENIES** ABC's Petition for Judicial Review in its  
4 entirety and **AFFIRMS** the decisions of the State Environmental Commission.

5 ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
6 Dated this 26th day of April, 2021

7   
8 HONORABLE BITA YEAGER  
9 DISTRICT COURT JUDGE  
10 04B 829 B0F0 71AB  
11 Bitia Yeager  
12 District Court Judge  
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22 Submitted by:

23 AARON D. FORD  
24 Attorney General  
25 DANIEL P. NUBEL (Bar No. 13553)  
26 Deputy Attorney General  
27 State of Nevada  
28 Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
T: (775) 684-1225  
E: [DNubel@ag.nv.gov](mailto:DNubel@ag.nv.gov)  
*Attorney for Respondent NDEP*

1 CSERV

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J  
7 Petitioner(s)

8 DEPT. NO. Department 1

9 vs.

10 State Environmental  
11 Commission, Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

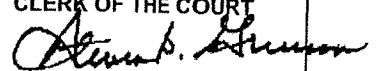
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Notice of Deposition was served via the court's electronic eFile system  
15 to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 4/26/2021

17 Dorene Wright dwright@ag.nv.gov

18 Daniel Nubel dnubel@ag.nv.gov

19 Byron Thomas byronthomaslaw@gmail.com



1 **NEOJ**  
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](mailto:dnubel@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

11 **Petitioner,**

Dept. No. 1

12 **vs.**

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

20 **Respondents.**

18 **NOTICE OF ENTRY OF ORDER**  
19 **DENYING PETITION FOR JUDICIAL REVIEW**

20 **TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **YOU, AND EACH OF YOU, please take notice that an Order Denying Petition for**  
22 **Judicial Review was entered in the above-entitled matter on the 26 day of April, 2021. A**  
23 **copy of said Order is attached hereto as Exhibit 1.**

24 **///**

25 **///**

26 **///**

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28 **///**

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**AFFIRMATION**

The undersigned does hereby affirm that the forgoing Notice of Entry of Order Denying Petition for Judicial Review does not contain the social security number of any person.

DATED this 30th day of April, 2021.

AARON D. FORD  
Attorney General

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 30th day of April, 2021, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING PETITION FOR JUDICIAL REVIEW, 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](mailto:byronthomaslaw@gmail.com)

/s/ Dorene A. Wright

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**INDEX OF EXHIBITS**

<b>EXHIBIT No.</b>	<b>EXHIBIT DESCRIPTION</b>	<b>NUMBER OF PAGES</b>
1.	Order Denying Petition for Judicial Review filed April 26, 2021	3

# EXHIBIT 1

# EXHIBIT 1

1 ORDD

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 ABC RECYCLING INDUSTRIES, LLC,  
5 Petitioner,

Case No. A-20-818624-J

Dept. No. 1

6 vs.

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

11 Respondents.

12 ORDER DENYING PETITION FOR JUDICIAL REVIEW

13 This case comes before the Court pursuant to ABC Recycling Industries, LLC's  
14 (ABC) Petition for Judicial Review, which was filed on July 27, 2020. ABC's Petition for  
15 Judicial Review challenges the State Environmental Commission's decision to affirm the  
16 Nevada Division of Environmental Protection decision to revoke ABC's Reclamation  
17 Permit #0171. The case was fully briefed by all parties. On April 15, 2021, the Court heard  
18 oral argument by all parties. After reviewing the relevant papers and hearing the  
19 arguments of the parties, the Court finds, concludes, and rules as follows:

20 Based on the Court's review of the record and the law, substantial evidence in the  
21 record supports the State Environmental Commission's decision in this case. The record  
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23 Nevada Division of Environmental Protection did not commit an error of law in revoking

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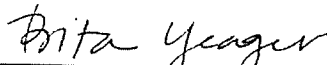
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1 ABC's Reclamation Permit #0171 based on the undisputed fact that ABC did not pay its  
2 annual fee as required by statute and regulation.

3 Therefore, the Court hereby **DENIES** ABC's Petition for Judicial Review in its  
4 entirety and **AFFIRMS** the decisions of the State Environmental Commission.

5 ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
6 Dated this 26th day of April, 2021

7   
8 HONORABLE BITA YEAGER  
9 DISTRICT COURT JUDGE  
10 04B 829 B0F0 71AB  
11 Bita Yeager  
12 District Court Judge

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22 Submitted by:

23 AARON D. FORD  
24 Attorney General  
25 DANIEL P. NUBEL (Bar No. 13553)  
26 Deputy Attorney General  
27 State of Nevada  
28 Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
T: (775) 684-1225  
E: [DNubel@ag.nv.gov](mailto:DNubel@ag.nv.gov)  
*Attorney for Respondent NDEP*

1 CSERV

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J  
7 Petitioner(s)

8 DEPT. NO. Department 1

9 vs.

10 State Environmental  
11 Commission, Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

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14 Court. The foregoing Notice of Deposition was served via the court's electronic eFile system  
15 to all recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 4/26/2021

17 Dorene Wright dwright@ag.nv.gov

18 Daniel Nubel dnubel@ag.nv.gov

19 Byron Thomas byronthomaslaw@gmail.com  
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*Steven D. Grierson*

1 LAW OFFICES OF BYRON THOMAS  
2 BYRON THOMAS  
3 Nevada Bar No. 8906  
4 3275 S. Jones Blvd. Ste. 104  
5 Las Vegas, Nevada 89146  
6 Phone: (702) 747-3103  
7 Facsimile: (702) 543-4855  
8 Attorneys for Plaintiff

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

) Case No.: A-20-818624-J

) Dept. No: I

9 ABC RECYCLING INDUSTRIES, LLC

11 Petitioner,

12 vs.

NOTICE OF APPEAL

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

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1 Plaintiff, ABC Recycling Industries, LLC, by and through its undersigned counsel of Law  
2 Offices of Byron Thomas hereby give notice of its Appeal to the Supreme Court of Nevada of the  
3 Order Denying Petition for Judicial Review, with NOE dated April 30, 2021, and attached hereto as  
4 Exhibit "A."

5  
6 Dated June 1, 2021.

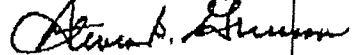
7  
8 LAW OFFICES OF BYRON THOMAS

9 /s/ Byron E. Thomas

10 BYRON E. THOMAS, ESQ.  
11 Nevada Bar No. 8906  
12 3275 S. Jones Blvd. Ste. 104  
13 Las Vegas, Nevada 89146  
14 Phone: 702 747-3103  
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EXHIBIT "A"



1 NEOJ  
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](mailto: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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The undersigned does hereby affirm that the forgoing Notice of Entry of Order Denying Petition for Judicial Review does not contain the social security number of any person.

DATED this 30th day of April, 2021.

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Attorney General

By: /s/ Daniel P. Nubel  
DANIEL P. NUBEL  
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Byron E. Thomas, Esq.  
LAW OFFICES OF BYRON THOMAS  
E: byronthomaslaw@gmail.com

/s/ Dorene A. Wright

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# EXHIBIT 1

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4 ABC RECYCLING INDUSTRIES, LLC,

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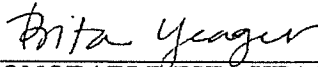
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6 Dated this 26th day of April, 2021

7   
8 HONORABLE BITA YEAGER  
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04B 829 B0F0 71AB  
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District Court Judge

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25 State of Nevada  
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28 Attorney for Respondent NDEP

1 CSERV  
2

3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 ABC Recycling Industries, LLC., 7 Petitioner(s) 8 vs. 9 State Environmental 10 Commission, Respondent(s)	CASE NO: A-20-818624-J DEPT. NO. Department 1
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11 **AUTOMATED CERTIFICATE OF SERVICE**  
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