



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** April 15, 2021

Staff Contact: Lee Plemel, Community Development Director

Agenda Title: For Possible Action: Discussion and possible action regarding Tahoe Western Asphalt, LLC's appeal of the Planning Commission's decision to revoke special use permit SUP-10-115 for an asphalt plant and aggregate crushing facility on property zoned General Industrial, located at 8013 Highway 50 East, APNs 008-611-31, -33, -37 and -41. (Lee Plemel, lplemel@carson.org)

Staff Summary: In accordance with Carson City Municipal Code ("CCMC") 18.02.060, Tahoe Western Asphalt is appealing to the Board of Supervisors the February 24, 2021 decision of the Planning Commission revoking SUP-10-115. The Planning Commission conducted a show-cause hearing regarding the special use permit on February 24, 2021 and revoked the special use permit based on violations of the special use permit conditions of approval. The Board of Supervisors may affirm, modify or reverse the decision of the Planning Commission.

Agenda Action: Formal Action / Motion **Time Requested:** 60 minutes

Proposed Motion

I move to deny the appeal and uphold the Planning Commission's decision to revoke the special use permit.

Board's Strategic Goal

Quality of Life

Previous Action

January 26, 2011 – The Planning Commission approved the original special use permit (SUP-10-115) issued to Tahoe Western Asphalt ("TWA") for the asphalt plant and aggregate crushing operations at the subject site.

[Note: Periodic reviews and amendments to the special use permit that occurred between January 2011 and November 2019 are not noted here because they are not relevant to the current special use permit conditions and the appeal matter.]

November 19, 2019 – The Planning Commission conducted an annual review of the special use permit and amended conditions relating to permitted hours of operation and equipment to help control odors.

The applicant appealed the Planning Commission's decision of November 19, 2019, within 10 days of the decision.

December 17, 2019 – The Planning Commission directed staff to conduct an investigation regarding the special use permit, pursuant to CCMC 18.02.090 (Revocation or reexamination of variance or special use permit), based on complaints of odors from adjacent residents and allegations of violations of conditions of approval of the permit.

February 6, 2020 – The Board of Supervisors, at the request of City staff, referred the appeal of the November 2019 decision back to the Planning Commission for further consideration based on new information that was made available.

February 26, 2020 – The Planning Commission reviewed the special use permit and new information and modified condition of approval #17 to prohibit odors from being detected beyond the property lines, among other amendments. Refer to the attached Planning Commission notice of decision from February 26, 2020, for details.

The applicant appealed the Planning Commission’s decision of February 26, 2020, within 10 days of the decision.

June 4, 2020 – The Board of Supervisor’s considered the appeal of the Planning Commission decision of February 26, 2020 and modified the conditions of approval relating to the status of NDEP permitting and monitoring of odor violations. Refer to the attached Board of Supervisors notice of decision dated June 4, 2020 for details.

October 28, 2020 – The Planning Commission conducted the required one-year review of the special use permit and accepted the annual review subject to another review in October 2021.

October 28, 2020 – The Planning Commission reviewed the investigation materials (as directed at the December 17, 2019 meeting) and directed staff to serve notice to TWA to appear before the Commission to address the alleged violations and show cause why the Special Use Permit should not be revoked or reexamined.

February 2 & 4, 2021 – Letters ordering TWA to appear before the Planning Commission for a show-cause hearing were sent to TWA in compliance with the notification requirements of CCMC 18.02.090.

February 24, 2021 – The Planning Commission conducted the show-cause hearing for the TWA special use permit and, with a 7-0 vote, revoked the special use permit “based on the evidence of failure to comply with the conditions of the permit and creating a public nuisance that is detrimental to the public health, safety and welfare, including emitting noxious odors into surrounding neighborhoods.” Refer to the attached staff report to the Planning Commission dated February 24, 2021 and associated supplemental information for more details on the Planning Commission’s decision.

The applicant appealed the Planning Commission’s decision of February 24, 2021, within 10 days of the decision.

Background/Issues & Analysis

Carson City Municipal Code 18.02.090 states, in applicable part:

“Any of the following reasons or occurrences are grounds for a hearing on revocation or reexamination of a variance or special use permit, pursuant to Title 18 (Show Cause Procedures):

1. A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit; . . .
- . . .
5. Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare;”

After a review of the attached investigation report and supplemental information, the Planning Commission revoked TWA's special use permit based on the following findings:

1. Tahoe Western Asphalt has been in violation of its NDEP permit in violation of SUP condition number 12. TWA was cited and fined by NDEP for violations between January 2017 and March 2018. TWA received a Notice of Violation from NDEP dated August 14, 2020, and a stop-work order, dated August 14, 2020, with a demand to bring the operation into compliance with NDEP permit requirements or shut down the operation by August 26, 2020. TWA received a stop-work order dated August 26, 2020, requiring TWA to cease operations due to non-compliance with NDEP permit regulations;
2. TWA has violated the requirement in condition number 17, which requires odors to be "suppressed" and prohibits odors from being detected beyond the property line. Carson City Code Enforcement staff detected odors from the residential neighborhood to the east of the TWA plant on 6 of 17 site visits between February 18, 2020, and July 14, 2020. On four of these occasions Code Enforcement staff characterized the odors as "strong" or "very strong." In addition, dozens of complaints from surrounding residents are documented by City Code Enforcement, Lyon County Code Enforcement, and NDEP staff; and
3. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation.

The Planning Commission based its decision on these three findings. However, any one of the findings could be cause for revocation of the special use permit.

For more details regarding the basis of the appeal and the Planning Commission's decision, please refer to the attached documents, which include:

- 1) The appeal and supporting documentation from the appellant.
- 2) The Planning Commission show cause hearing staff report and supporting packet beginning with the cover page of the staff report for the Planning Commission meeting of February 24, 2021. (Note: Late material correspondence provided to the Planning Commission from the appellant, dated February 23, 2021, is included as Exhibit 1 in the appellant's submittal and is not reproduced in this section with the Planning Commission packet.)
- 3) Draft minutes from the Planning Commission meeting of February 24, 2021, pertaining to this item.

Applicable Statute, Code, Policy, Rule or Regulation

CCMC 18.02.080 (Special Use Permits), 18.02.090 (Revocation or reexamination of variance or special use permit) and 18.02.095 (Show cause procedure of variance or special use permit).

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted? No

Explanation of Fiscal Impact:

Alternatives

1. Reverse the Planning Commission's decision and allow the special use permit to remain effective under the conditions approved by the Board of Supervisors on June 4, 2020.

2. Modify the Planning Commission's decision by amending the conditions of approval or providing other direction regarding the special use permit.

Attachments:

[TWA.1.Appeal from applicant.pdf](#)

[TWA.2.PC.Packet.2.24.21.pdf](#)

[TWA.3.Draft 02-24-2021 PC Minutes.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

File No. 27532

March 5, 2021

VIA OVERNIGHT MAIL & EMAIL (LPLEMEL@CARSON.ORG)

Lee Plemel, AICP
Director of Community Development
Carson City Planning Division
108 E. Proctor St.,
Carson City, NV 89701
planning@carson.org

**RE: Appeal to Board of Supervisors of Carson City Planning Commission Decision
February 24, 2021 Carson City Planning Commission Meeting, Agenda Item E.4.
FILE NO: LU-2020-0115 (SUP-10-115)**

Dear Mr. Plemel:

In accordance with your letter of February 25, 2021 regarding the above-referenced Planning Commission meeting and decision and Carson City Municipal Code (“CCMC”) 18.02.095, Tahoe Western Asphalt, LLC (“TWA”) hereby appeals to the Board of Supervisors the decision made by the Carson City Planning Commission (“CCPC”) at its meeting of February 24, 2021 (the “Meeting”) regarding Meeting Agenda Item E.4. (“AI E4”) concerning the above-referenced SUP (the “Appeal”). The Appeal was prepared by and is submitted by TWA’s attorney with respect to this matter: Thomas M. Padian (NV Bar No. 15303), Lanak & Hanna, P.C., and David R. Johnson (NV Bar No. 006696), Law Offices of David R. Johnson, PLLC, 8712 Spanish Ridge Avenue, Las Vegas, NV 89148. The appeal fee of \$250 required by CCMC 18.02.055 is enclosed herewith.

Specifically, TWA appeals to the Board of Supervisors the CCPC’s decision to revoke the above-referenced SUP-10-115 regarding TWA’s asphalt plant in Carson City (“SUP”) and the CCPC’s findings that TWA has: (1) been in violation of its Nevada Division of Environmental Protection (“NDEP”) permit in violation of SUP condition number 12, (2) violated the requirement in condition number 17 of the SUP, which requires odors to be controlled and prohibits odors from being detected beyond the property line after condition 17 of the SUP became effective on June 4, 2020; and (3) has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation (hereinafter, these findings are sometimes referred to, collectively, as the CCPC Findings”).

TWA asserts that the CCPC’s decision to revoke the SUP is not, and none of the CCPC Findings are, supported by the evidence presented to the CCPC. In support of this assertion, TWA relies on and incorporates herein by reference the Public Comments submitted for the Meeting by TWA in its letter to the Carson City Planning Department regarding the Meeting dated February 23,

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2021 and the attachments thereto (“TWA’s Public Comments”). A true and correct copy of TWA’s Public Comments is attached hereto as **Exhibit 1**.

In addition to TWA’s Public Comments, TWA submits the following as further grounds for the Appeal:

In connection with the CCPC’s review of the SUP at the Meeting, the Carson City Enforcement Staff (“CCES”) prepared and submitted to the CCPC a Staff Report for AI E4 (“SR”). Attachment 2 to the SR is the CCES’s Staff Report For The Planning Commission Meeting of October 28, 2020 regarding Agenda Item: E.7 (the “10/28 SR”). The 10/28 SR states the factual background of the SR.

According to the 10/28 SR, Conditions 17 and 19 were added to the SUP and became effective upon approval of the Board of Supervisors as set forth in the Notice of Decision dated June 4, 2020 of the Board of Supervisors (the “NOD”). The NOD is attached as Attachment 2 to the 10/28 SR. In pertinent part, it states:

“The following are associated with the use...

17. The operator of the facility shall require that odors are not detectable beyond the property line....

19. ***City Code Enforcement Staff will monitor off-site odors a minimum of three times a month and maintain a detailed log.*** The log will be presented to the Planning Commission at its October 2020 meeting.” [emphasis added.]

At the Meeting, CCES stated that it had complied with the above-stated requirements of Condition 19 to the SUP which was added on June 4, 2020 and required CCES to “monitor off-site odors a minimum of three times a month and maintain a detailed log.” That is not true and clearly mislead the CCPC. The only item that is part of the SR that could possibly be seen as an attempt to comply with Condition 19 of the NOD, is a Memorandum dated September 17, 2020 from William Kohbarger, Code Enforcement, to Lee Plemel, Community Development Director (the “CCES Memo”). It does not comply with this condition.

The CCES Memo identifies only 3 monitoring efforts of the TWA facility after the effective date of June 4, 2020: June 12, 2020; July 14, 2020; and September 17, 2020. The clear purpose of Condition 19 of the SUP was to provide CCES and the Board of Supervisors with actual evidence on which to evaluate TWA’s compliance with the SUP. Despite this requirement, according to the CCES Memo, CCES only investigated or monitored the TWA facility three times after Condition 19 was in effect. None revealed any violation of the SUP. Any revocation or modification of the SUP should be delayed until CCES complies with this requirement and monitors TWA’s operations three times a month for three months. That would allow TWA’s performance to be based on actual evidence and fulfill the Board of Supervisors’ goal with respect to the addition of Condition 19 to the SUP.

As set forth above, the CCPC found that TWA has been in violation of its NDEP air quality operating permit (“AQOP”) in violation of SUP condition number 12. The SR identifies two Notices of Alleged Air Quality Violation issued by NDEP (“NOAQV”) that concern alleged failures by TWA to operate air quality equipment in compliance with the AQOP, NOAQV Nos. 2783 and 2786. The one alleged violation stated in NOAQV 2783 resulted from a weather condition beyond TWA’s control that disabled an air quality emission control device at the TWA facility. TWA believes that NOAQV 2786 is scientifically invalid.

The other NOAQV referenced in the SR, NOAQV No. 2784, concerns only technical alleged record keeping violations of the AQOP. As a result, NOAQV 2784 has no relevance to an evaluation of TWA’s compliance with the SUP. Each of these NOAVs was issued on August 14, 2020. All of the NOAQVs are the subject of an appeal/petition for review filed by TWA now pending in the First Judicial District Court of Nevada, Carson City, Case No. 21OC000041B.

Further, as set forth in the September 23, 2020 letter from NDEP to TWA attached hereto as **Exhibit 2**, TWA’s AQOP expires on May 23, 2021. In order to keep it current, TWA must file a renewal application for the AQOP on or before March 14, 2021. TWA believes that the renewed AQOP may require TWA to monitor potential air quality emissions from the source or sources at TWA’s facility. Based on consultations with its technical environmental advisors, TWA believes that monitoring potential emissions from NDEP at the source is the most accurate method to monitor potential emissions. Any findings of emissions from TWA’s facility should be based on actual monitoring data from TWA’s facility.

Further, absent on-site testing of emissions at the TWA facility, any conclusion that TWA is the source of any perceived odors detected in Mound House or other areas is pure speculation lacking any evidentiary support. Such odors could easily be caused by other potential sources in the areas, such as the Brunswick Canyon Materials facility.

The only evidence presented at the Meeting regarding emissions from TWA’s facility was the unsubstantiated hearsay complaints of “smells” and “odors” by unidentified residents of a subdivision located outside of the boundaries of Carson City in Lyon County set forth in the CCES Memo (the “LC Complaints”). Since the relevant period after Condition 17 prohibiting odors emanating from the TWA facility was added to the SUP on June 4, 2020, according to the CCES Memo, CCES received 9 LC Complaints and investigated 2. Both of these investigations revealed that each of the LC Complaints was false because CCES’s investigation detected no odors. Despite this evidence the 10/28 SR states that “it can be assumed each of the complaints [LC Complaints made after June 4, 2020] were valid.”

That conclusion is absurd. The available evidence mandates the exact opposite conclusion. Any LC Complaints not confirmed by physical investigation should be deemed false and disregarded. Since the relevant period after June 4, 2020, no LC Complaints investigated by CCES have been confirmed. Further, there is no evidence that TWA is the source of any perceived odors that are the subject of any of the LC Complaints. Absent on-site testing at the TWA facility any perceived odors could easily be from sources other than TWA.

Based on comments made by CCPC commissioners at the Meeting, it appears that CCPC's findings that odors from the TWA facility created a nuisance were based on purported comments made to the CCPC at a meeting prior to the Meeting. It appears that the referenced meeting may have been the CCPC meeting of February 26, 2020 (the "2/26/2020 CCPC Meeting"). Issues related to the TWA facility are listed as Item E.6 on the agenda to the 2/26/2020 CCPC Meeting ("AI E.6."). A true and correct copy of the Agendas for the 2/26/2020 CCPC Meeting is attached as **Exhibit 3**.

A report by CCES staff dated February 19, 2020 regarding AI E.6. was submitted to the CCPC regarding AI E.6 (the "2/19 SR"). The 2/19 SR states, in pertinent part, "between November 6, 2019 and February 13, 2020, code enforcement has received nineteen complaints, 17 were odor related and 2 were related to hours of operation. **Code Enforcement staff visited Moundhouse twice during this time period, and did not detect any odors.** Staff in Lyon County is not aware of any complaints / issues related to Tahoe Western Asphalt since November 6, 2019." [emphasis added.] A true and correct copy of the 2/19 SR is attached hereto as **Exhibit 4**. Therefore, to their extent the findings by the CCPC at the Meeting were based on any odor complaints set forth in any public comment at the 2/26/2020 CCPC Meeting, they should be disregarded because they are countered by the findings of CCES in the 2/19 SR that CCES detected no odors from TWA.

Simply stated, there is no evidence supporting the CCPC decision to revoke the SUP or any findings made by the CCPC at the Meeting regarding TWA. As a result, TWA requests that the SUP remain in place in its current form. If you have any questions or wish to discuss this matter further, please contact Mark Johnson at (714) 451-7875 or mdjohnson@lanak-hanna.com.

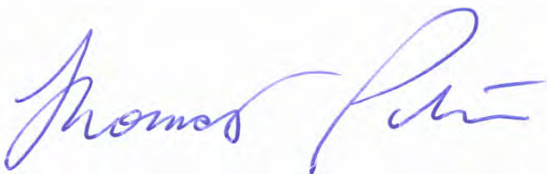
Sincerely,

Law Offices of David R. Johnson, PLLC



David R. Johnson
Attorney

Lanak & Hanna, P.C.



Thomas M. Padian
Attorney

Enclosures

EXHIBIT 1

February 23, 2021

VIA US MAIL & EMAIL

Carson City Planning Division
108 E. Proctor St.,
Carson City, NV 89701
planning@carson.org

RE: Carson City Planning Commission Meeting of February 24, 2021
Agenda Item E.4.
FILE NO: LU-2020-0115 (SUP-10-115)

Dear Planning Department:

Tahoe Western Asphalt, LLC (“TWA”) submits the following comments regarding Agenda Item E.4. (“AI E4”) of the Carson City Planning Commission of February 24, 2021 (the “Meeting”). These comments were prepared by TWA’s attorney with respect to this matter: Thomas M. Padian (NV Bar No. 15303), Lanak & Hanna, P.C., and David R. Johnson (NV Bar No. 006696), Law Offices of David R. Johnson, PLLC, 8712 Spanish Ridge Avenue, Las Vegas, NV 89148. Mr. Padian will represent TWA at the Meeting. Mr. Padian’s telephone number is (714) 451-7921 and his email is tmpadian@lanak-hanna.com.

According to the Agenda for the Meeting with respect to AI E4, “[t]he Commission may approve the continued operation under the current Special Use Permit [SUP-10-115], amend conditions of the Special Use permit, revoke (deny) the Special Use Permit (“SUP”) or take other actions pursuant to CCMC 18.02.090.” According to the Staff Report for AI E4 (“SR”), the “Recommended Motion” with respect to AI E4 is to “revoke SUP-10-115 based on the evidence of failure to comply with the conditions of the permit and creating a public nuisance that is detrimental to the public health, safety, and welfare, including emitting noxious odors into surrounding neighborhoods.” The SR provides no attribution for this purported statement.

I. Background and Findings Stated in Staff Report

TWA is the owner/operator of the asphalt facility that is the subject of the SUP and the owner/applicant under the SUP. The SR’s “INVESTIGATION FINDINGS FOR SHOW-CAUSE HEARING,” in pertinent part, states:

1. Tahoe Western Asphalt has been in violation of its NDEP permit in violation of SUP condition number 12. TWA was cited and fined by NDEP for violations between January 2017 and March 2018. TWA received a Notice of Violation from NDEP dated August 14, 2020... SUP- 10-115 condition of approval number 12 states:

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12. The applicant shall comply with applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.

2. TWA has violated the requirement in condition number 17, which requires odors to be controlled and prohibits odors from being detected beyond the property line. Carson City Code Enforcement staff detected odors from the residential neighborhood to the east of the TWA plant on 6 of 17 site visits between February 18, 2020, and July 14, 2020... SUP-10-115 condition of approval number 17 states:

17. ~~The operator shall utilize Ecosorb in operations to suppress odors.~~ The operation of the facility shall require that odors are not detectable beyond the property line. [Note: The deleted verbiage was effective before June 4, 2020, and the revised condition became effective after the Board of Supervisors upheld the modification on appeal on June 4, 2020.]

3. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations *and when the plant is not in operation.* (emphasis added.)

The SR states “Carson City Municipal Code 18.02.090 states, in applicable part:

Any of the following reasons or occurrences are grounds for a hearing on revocation or reexamination of a variance or special use permit, pursuant to Title 18 (Show Cause Procedures):

1. A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit; . . .

5. Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety, and welfare.

Attachment 1 to the SR is a Complaint and Notice of Order to Appear for Show Cause Hearing dated February 4, 2021 signed by Lee Plemel, Director, Carson City Community Development Department. Attachment 2 to the SR is the Staff Report For The Planning Commission Meeting of October 28, 2020 regarding Agenda Item: E.7 (the “10/28 SR”).

Factual Background Regarding Alleged SUP Violations Stated in 10/28 SR

The 10/28 SR states the factual background of the SR. The 10/28 SR states, in pertinent part, the following factual background:

“On January 26, 2011, the Planning Commission approved a Special Use Permit (SUP-10-115) for an asphalt plant and aggregate crushing facility on the subject site. Tahoe Western Asphalt (“TWA”) has been the operator of the asphalt plant under that Special Use Permit.”

“On November 19, 2019, the Planning Commission conducted a one-year review of the Special Use Permit. During this meeting staff informed the Planning Commission of the 99 complaints that had

been received following the October 24, 2018 meeting. Ninety-eight of the complaints were about odors, and one complaint was regarding hours of operation. The City’s Code Enforcement staff documented six visits to Mound House following the complaints. During one visit, there was no odor detected, during four visits there was a faint odor detected, and during one visit there was a strong odor detected. *NDEP also received 127 complaints during the year following the October 24, 2018 meeting. Although strong odors and opacity were observed, the threshold for a violation of NDEP standards was not met.*” (emphasis added.)

“On February 26, 2020, after being referred back to the Planning Commission by the Board of Supervisors, the Commission reviewed the new information pertaining to its prior decision from November 19, 2019 and the amended conditions of approval. The Planning Commission voted 7-0 to modify the conditions of approval to:

- 2) Delete the condition requiring the use of a regenerative thermal oxidizer—which was determined to be inappropriate for the use—and replaced it with a condition to prohibit asphalt odors from being detected outside the property on which the asphalt plant is operating (condition #17) ...and
- 4) Require periodic code enforcement monitoring of the operation for off-site odors, with the ability to review the Special Use Permit before October 2020 if code enforcement finds that violations are occurring (condition #19).”

“On August 26, 2020, a stop-work order from NDEP to TWA became effective, based on alleged violations of NDEP regulations and permit requirements... To City staff’s knowledge, the TWA asphalt plant has not been in operation since the stop-work order effective date of August 26, 2020.”

A. Findings in 10/28 SR

The 10/28 SR, in pertinent part, states the following findings of the Carson City Code Enforcement Staff regarding TWA’s alleged violations of the SUP.

“Staff findings: TWA has been in violation of its NDEP permit in violation of Special Use Permit condition number 12.

Attached are the most recent NDEP notices to TWA, including a Notice of Violation dated August 14, 2020, a stop-work order dated August 14, 2020 (which had a stop-work order effective date of August 26, 2020), and a stop-work order dated August 26, 2020. The stop-work order was enforced based on non-compliance with NDEP permit requirements...

The NDEP violations relate primarily to pollution and dust control, in addition to technical NDEP permit requirements. Despite numerous complaints regarding offensive odors and actual observations of odors by NDEP and City staff, no violations of NDEP odor requirements have been documented.”

“Staff findings: TWA has been in violation of condition number 17 by not suppressing odors from the plant and allowing odors to be detectable beyond the property after June 4, 2020, the effective date of the amended condition.

The amended condition [Condition 17] became effective on June 4, 2020, when the Board of Supervisors upheld the Planning Commission’s condition on appeal by TWA. Prior to that date, there was no specific odor standard in the conditions of approval other than complying with NDEP requirements. As noted above, *there have been no documented violations of NDEP standards for odors*. (emphasis added.)

However, TWA operated between June 4 and August 26, 2020 under the amended condition. While *Code Enforcement staff made no direct observations of odors during the two inspections conducted after June 4, 2020 [the effective date of Condition 17 of the SUP]*, several complaints of odors were received from residents during that time. Since the TWA plant continued to operate with the same equipment it had used prior to June 4, 2020, *it can be assumed that the complaints were valid* and that odors continued to leave the property depending on weather conditions at any given time. (emphasis added.)”

“Nuisance findings: In addition to the above conditions of approval, the Planning Commission may consider whether the operation “creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare” pursuant to CCMC 18.02.090(5) ...

Code Enforcement staff have documented offensive odors noticeable from the neighborhood to the east of the TWA asphalt plant operation, which is approximately one-quarter mile from the operation. In addition, numerous complaints of odors have been received from those residents over the past four years.”

B. Board of Supervisors Notice of Decision

The new conditions of the SUP became effective upon approval of the Board of Supervisors as set forth in the Notice of Decision dated June 4, 2020 of the Board of Supervisors (the “NOD”). The NOD is attached as Attachment 2 to the 10/28 SR. In pertinent part, it states:

“The following are associated with the use...

17. The operator of the facility shall require that odors are not detectable beyond the property line....

19. City Code Enforcement Staff will monitor off-site odors a minimum of three times a month and maintain a detailed log. The log will be presented to the Planning Commission at its October 2020 meeting.”

C. Carson City Code Enforcement Staff Monitoring of the TWA Facility

The only item that is part of the SR that could possibly be seen as an attempt to comply with Condition 19 of the NOD, set forth above, is a Memorandum dated September 17, 2020 from William Kohbarger, Code Enforcement, to Lee Plemel, Community Development Director (the “CC

Memo”). It does not comply with this condition. In fact, the CC Memo identifies only 3 monitoring efforts of the TWA facility after the effective date of June 4, 2020: June 12, 2020; July 14, 2020; and September 17, 2020. With respect to each of these efforts, the CC Memo, in pertinent part, states:

“June 12, 2020	09:00 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision) [Not in Carson City]. ... No odors detected. [Based on the “Inspection Log” described below, it is not clear if this inspection occurred on June 11 or June 12.]
July 14, 2020	08:25 hrs.-08:57 hrs., CE Officer Kohbarger conducted a site visit to the Mound House (Carson Highland subdivision) area [Not in Carson City].
September 17, 2020	07:58 a.m., CE Officer Kohbarger conducted a site visit and observed no activity.

The CC Memo also includes an “Inspection Log.” It includes a description of hearsay complaints of smells or odors that CE Kohbarger purportedly received after June 4, 2020 by telephone or email [no emails are attached] from an unidentified citizen(s) of “Mound House.” According to the CC Memo, these complaints were received on June 4, 5, 6, 8,11; July 1, 7, 14; and August 19, 2020. CE Kohbarger investigated 2 of these complaints: a complaint of June 11, 2020 and a complaint of July 14. On both occasions, CE Kohbarger detected no odors.

D. NDEP Notices of Alleged Air Quality Violations

The SR includes three Notices of Alleged Air Quality Violations issued to TWA by the Nevada Department of Environmental Protection (“NOAQV”): NOAQV Nos. 2783, 2784, and 2786. These NOAQVs are attached as part of Attachment 4 to the 10/28 SR. Each of these NOAVs was issued on August 14, 2020. All of the NOAQVs are the subject of an appeal/petition for review filed by TWA now pending in the First Judicial District Court of Nevada, Carson City, Case No. 21OC000041B. A true and correct copy of this Petition is attached as **Exhibit 1**.

All of the NOAQVs concern alleged violations TWA’s Class II Air Quality Operating Permit (Permit No. 1611-3748) that was issued on May 23, 2016 (the “AQOP”). NOAQV Nos. 2783 and 2786 concern operation of air pollution control equipment at the TWA facility. NOAQV 2783 concerns observations by NDEP staff on March 23 and 24, 2020 that “the permit-required fogging water spray (FWS) for one emission unit under System 1 (PF1.002) was installed but was not operating.” This NOAQV notes that Robert Matthews of TWA advised NDEP Staff the “FWS had not been operating because they freeze in the cold weather.” Therefore, the one alleged violation stated in NOAQV 2783 resulted from a weather condition beyond TWA’s control.

NOAQV 2786 concerns an investigation of the TWA facility conducted by NDEP Staff of March 23, 2020. It states “On March 23, 2020, NDEP staff investigated the complaints and observed opacity emitting from the stack for System 2 - Asphalt Plant Drum Dryer Mixer/Burner (S2.001). NDEP staff conducted four six-minute Method 9 Visual Emission Observations (VEO) on S2.001 between 8:50 am and 10:00 am. The average opacities for each of the Method 9 VEOs were 62.5%, 25%, 63 .5%, and 53.5%. The AQOP and 40 CFR Part 60.92(a)(2) restrict opacity in excess of 20% to be emitted from S2.001.” Therefore, NOAQV 2786 solely concerns

operations at the TWA facility on March 23, 2020 which pre-dates the effective date of Condition 17 of the SUP, June 4, 2020. TWA disputes these findings as being scientifically invalid. Further, opacity is a measurement of transparency of an object and does not directly relate to odor.

NOAQV No. 2784 solely concerns alleged violation of certain record keeping requirements of the AOQP. However, the purported absence of these records has no relationship to any alleged emissions from the TWA facility, and therefore has little relevance to an evaluation of TWA's compliance with the SUP.

II. TWA Comments Regarding the SR

A. Odor Complaints and Investigation

The SR provides no basis for modification or revocation of the SUP. The SR demonstrates that CCES's issues with TWA's compliance with the SUP are primarily based on unsubstantiated hearsay complaints of "smells" and "odors" by unidentified residents of a subdivision located outside of the boundaries of Carson City in Lyon County (the "LC Complaints"). The SR does not identify a single complaint by any person that lives or works in Carson City, let alone adjacent to the TWA facility.

According to the CCES memo, since the relevant period after Condition 17 prohibiting odors emanating from the TWA facility was added to the SUP on June 4, 2020, CCES received 9 LC Complaints and investigated 2. Both of these investigations revealed that each of the LC Complaints was false because CCES's investigation detected no odors. Despite this evidence the 10/28 SR states that "it can be assumed each of the complaints [LC Complaints made after June 4, 2020] were valid."

That conclusion is absurd. The available evidence mandates the exact opposite conclusion. Any LC Complaints not confirmed by physical investigation should be deemed false and disregarded. Since the relevant period after June 4, 2020, no LC Complaints investigated by CCES have been confirmed. Therefore, there is absolutely no evidence of any violation by TWA of Condition 17 and the finding in the SR to the contrary is erroneous and should be disregarded.

Further, on June 4, 2020, the Board of Supervisors added Condition 19 to the SUP requiring CCES to "monitor off-site odors a minimum of three times a month and maintain a detailed log." The clear purpose of this requirement was to provide CCES and the Board of Supervisors with actual evidence on which to evaluate TWA's compliance with the SUP. Despite this requirement, according to the CCES Memo, CCES only investigated or monitored the TWA facility three times. None revealed any violation of the SUP. Any modification of the SUP should be delayed until CCES complies with this requirement and monitors TWA's operations three times a month for three months. That would allow TWA's performance to be based on actual evidence rather than baseless conjecture.

Carson City Planning Division
February 23, 2021

Page 7

B. Alleged Violations of NDEP Air Quality Permit

As set forth above, the SR identifies two NOAQVs that concern alleged failures to operate air quality equipment in compliance with the AQOP, NOAQV Nos. 2783 and 2786. The other NOAQV referenced in the SR concerns only technical alleged record keeping violations of the AQOP. As a result, NOAQV has no relevance to an evaluation of TWA's compliance with the SUP. Further, as set forth above, court review of each of the NOAQVs is pending.

To the extent they are considered, NOAQV Nos. 2783 and 2786 concern alleged failures to operate air quality equipment on two days: March 23 and 24, 2020. Further, the alleged violation set forth in NOAQV 2783 was due to inclement weather beyond TWA's control. The alleged violation described in NOAQV 2786 does not correspond to a release of odors from the TWA facility and is scientifically invalid. As a result, neither of these NOAQVs provided any grounds to modify the SUP.

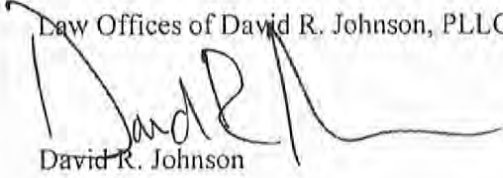
C. There is no Basis for the Finding of Nuisance in the SR

The SR includes a finding that the TWA operations "has created or tended to create a public nuisance." The SR does not state the dates of this alleged nuisance or the basis for this finding. However, it seems clear that it is based primarily, if not exclusively, on the LC Complaints. As set forth above, the available evidence demonstrates that the LC Complaints are not credible and should be disregarded. As a result, there is no evidence supporting the finding of nuisance stated in the SR.

Simply stated, there is no evidence showing any need for any modification or revocation of the SUP. As a result, TWA requests that the SUP remain in place in its current form.

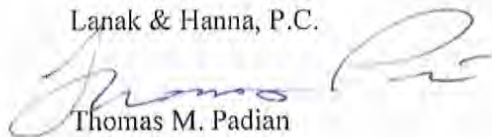
Sincerely,

Law Offices of David R. Johnson, PLLC



David R. Johnson
Attorney

Lanak & Hanna, P.C.



Thomas M. Padian
Attorney

Enclosure

EXHIBIT 1

lanak&hanna

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4 Orange, CA 92868
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8 LAW OFFICES OF DAVID R. JOHNSON, PLLC
9 David R. Johnson (NV Bar No. 006696)
10 8712 Spanish Ridge Ave.
11 Las Vegas, NV 89148
12 Telephone: (702) 997-5974
13 Email: david@drjohnsonpllc-law.com

14 Attorneys for Plaintiff/Petitioner
15 TAHOE WESTERN ASPAHLT, LLC

16 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
17 **CARSON CITY**

18 TAHOE WESTERN ASPHALT, LLC,
19
20 Petitioner,
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22 v.
23
24 NEVADA STATE ENVIRONMENTAL
25 COMMISSION, an administrative
26 agency/department/division of the State of Nevada;
27 STATE OF NEVADA DEPARTMENT OF
28 CONSERVATION & NATURAL RESOURCES,
an administrative department of the State of
Nevada; STATE OF NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION, an
administrative division of the State of Nevada
Department of Conservation & Natural Resources,
Respondents.

Case No.:
Dept. No.:
**VERIFIED PETITION FOR REVIEW OF
ADMINISTRATIVE AGENCY FINAL
DECISION BY THE NEVADA STATE
ENVIRONMENTAL COMMISSION;
REQUEST FOR STAY OF ADMINISTRATIVE
AGENCY FINAL DECISION FINAL
DECISION
[NRS 233B.130 and NRS 233B.135]**

Petitioner TAHOE WESTERN, INC. ("TWI"). by and through its attorneys of record, Thomas M. Padian, Esq. of the law firm of Lanak & Hanna, P.C. and David R. Johnson, Esq., of The Law Offices of David R. Johnson, PLLC, for its Petition against the Respondents, and each of them, alleges and avers as follows:

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JURISDICTION, VENUE AND PARTIES

1
2 1. This action presents a Petition for Judicial Review of a decision by Respondent
3 NEVADA STATE ENVIRONMENTAL COMMISSION. Jurisdiction is conferred over this action
4 pursuant to NRS 233B.130.

5 2. Venue is proper in this Court pursuant to NRS 233B.130.2.(b).

6 3. Petitioner TAHOE WESTERN ASPHALT, LLC (“TWA”) was and at all times
7 mentioned, and is now, a Nevada Limited Liability Company, conducting business in Carson City,
8 Nevada.

9 4. Respondent NEVADA STATE ENVIRONMENTAL COMMISSION is an
10 administrative agency/division/department of the State of Nevada (“NSEC”).

11 5. Respondent STATE OF NEVADA DEPARTMENT OF CONSERVATION &
12 NATURAL RESOURCES is an administrative department of the State of Nevada (“NDCNR”).

13 6. Respondent STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
14 is an administrative division of NDCNR, an administrative department of the State of Nevada
15 (“NDEP”). Hereinafter, Respondents NSEC, NDCNR, and NDEP, respectively, are sometimes
16 collectively referred to as “Respondents.”

FACTUAL BACKGROUND

17
18 7. TWA operates and for a number of years has operated an asphalt plant in Carson City,
19 Nevada (the “Plant”). The Plant operates pursuant to Class II Air Quality Operating Permit No. AP1611-
20 3748 issued by the NDEP to TWA on or about May 23, 2016 (the “AQOP”).

21 8. On August 14, 2020 NDEP sent TWA a letter (the “August 14 NDEP Letter”) enclosing
22 three separate notices to TWA regarding alleged violations of the AQOP: Notice of Alleged Air-Quality
23 Violation and Order Nos. (“NOAV”) 2783, 2784 and 2786, respectively. A true and correct copy of the
24 August 14 NDEP Letter, with enclosures, is attached hereto as **Exhibit 1**.

25 9. None of the NOAVs or the August 14 NDEP Letter state an anticipated, proposed, or
26 potential administrative fine or penalty with respect to any of the alleged violations of the AOQP. The
27 August 14 NDEP Letter merely states that “NDEP makes recommendations to the [NSEC] as to what an
28 appropriate penalty may be for an air quality violation.” However, the August 14 NDEP letter does not

1 state whether NDEP has made a recommendation to NSEC as to an appropriate penalty with respect to
 2 any of the NOAVs. Due this failure, the August 14, NDEP Letter did not adequately advise TWA of the
 3 allegations against it or the potential penalties and, therefore, did not provide TWA with the information
 4 required for TWA to make an informed decision regarding whether NOAVs should be appealed.

5 10. On October 28, 2020, the NSEC sent a letter to Robert Matthews, Owner of TWA,
 6 regarding the NOAVs (the “October 28 NSEC Letter”). A true and correct copy of the October 28
 7 NSEC Letter is attached hereto as **Exhibit 2**. The October 28 NSEC Letter stated “[o]n April 16, 2020,
 8 the Nevada Division of Environmental Protection (NDEP) held an enforcement conference with
 9 Tahoe Western Asphalt, LLC (TWA) to discuss supporting information regarding the draft Notice
 10 of Alleged Violation and Order (NOAV) Nos. 2783, 2784, & 2786. As a result of that meeting,
 11 NDEP formally issued the above NOAVs via [the August 14 NDEP Letter].” The October 28
 12 NSEC Letter also stated that the NSEC “will determine the appropriate penalty for the violations
 13 contained in the above referenced NOAVs on Wednesday, December 9, 2020 at 9:00am.

14 11. “The October 28 NSEC Letter also stated that “[d]uring the December 9th meeting,
 15 NDEP will provide the SEC with a brief overview of the NOAVs and the recommendation for an
 16 administrative penalty of \$870.00 for NOAV 2783, \$117,450.00 for NOAV 2784, and \$10,000.00 for
 17 NOAV 2786, totaling \$128,320.00. These recommended penalties were calculated using a penalty
 18 matrix previously approved by the SEC” Prior to receipt of the October 28 NSEC Letter, TWA had
 19 not been advised of a recommended penalty for any of the NOAVs. Further, the “penalty matrix”
 20 referenced in the October 28 NSEC Letter has never been provided to TWA.

21 12. The October 28 NSEC Letter also stated “[a]lthough your presence is not required at
 22 this meeting, you or a representative may wish to attend to speak on behalf of TWA.” Mr.
 23 Matthews attended the December 9 NSEC meeting referenced in the October 28 NSEC Letter.
 24 However, he was not permitted by the NDEP or NSEC to speak.

25 13. On December 9, 2020, the NSEC sent Mr. Matthews of TWA by certified mail its
 26 final decision with respect to the NOAVs (the “NSEC Final Decision”). A true and correct copy of
 27 the NSEC Final Decision is attached hereto as **Exhibit 3**. The NSEC Final Decision states that the
 28 NSEC “held a meeting on December 9, 2020. During the meeting, the SEC upheld two proposed

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1 penalty recommendations for Tahoe Western Asphalt, LLC. NOAV 2783 was upheld for the
 2 penalty amount of \$870.00 and NOAV 2786 was upheld for the penalty amount of \$10,000.00.
 3 After discussion, the SEC reduced the recommended penalty amount for NOAV 2784 from
 4 \$117,450.00 to \$39,150, for a total penalty amount of \$50,020.00.” The NSEC Final Decision,
 5 2020 Letter does not state when any of the alleged violations occurred, the purported length of any
 6 of the alleged violations or how any of the penalty amounts were determined.

7 14. The requirements for the content of a final decision of an administrative agency of the
 8 State of Nevada is set forth in NRS 233B.125. It states, in pertinent part, “a final decision must include
 9 findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based
 10 upon substantial evidence. Findings of fact, if set forth in statutory language, must be accompanied by a
 11 concise and explicit statement of the underlying facts supporting the findings.” The NSEC Final
 12 Decision does not meet these requirements.

13 15. By this Petition, TWA challenges the decisions and administrative penalties set forth in
 14 the Final Decision with respect to NOAV 2783, NOAV 2874 and NOAV 2876, pursuant to NRS
 15 233B.130 and NRS 233B.135. Pursuant to NRS 233B.130, a party who is aggrieved by a NSEC final
 16 decision may file a petition for judicial review within 30 days after service of the NSEC’s final decision.
 17 As set forth above, here, the NSEC Final Decision was served by certified mail on December 9, 2020. If
 18 an agency's decision is served by mail, rule governing computation of time adds three days to the time
 19 period for filing a petition for judicial review. *Mikohn Gaming v. Espinosa*, (2006), 137 P.3d 1150, 122
 20 Nev. 593. Therefore, this Petition is timely.

21 16. Under NRS 233B.135, in response to a Petition for judicial review of an agency decision,
 22 like the one here, “the court may remand or affirm the final decision or set it aside in whole or in part if
 23 substantial rights of the petitioner have been prejudiced because the final decision of the agency is: (a)
 24 In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the
 25 agency; (c) Made upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous in
 26 view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or
 27 capricious or characterized by abuse of discretion.”

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FIRST CAUSE OF ACTION

ACTON TO SET ASIDE/AMEND NSEC FINAL DECISION

(NRS 233B.130 AND NRS 233B.135)

(Against all Respondents)

17. TWA repeats and re-alleges each and every allegation contained in Paragraphs 1 through 16 as if fully set forth herein.

18. Substantial rights of TWA have been prejudiced by the issuance of the NSEC Final Decision because it was issued in violation of NRS 233B.135 and applicable law.

19. The NSEC Final Decision is are not rationally calculated to further the State’s legitimate interest in reducing air quality emissions. Instead, the NSEC Final Decision is made upon unlawful procedure, is arbitrary, capricious, and issued in violation of applicable law. Further, the allegations and administrative fines and penalties issued under the NSEC Final Decision are not supported by substantial evidence and constitute an abuse of discretion.

20. For these reasons, the NSEC Final Decision violates NRS 233B.135 and should be declared unlawful and enjoined and set aside.

SECOND CAUSE OF ACTION

(DENIAL OF DUE PROCESS, Nev. Const. Art. I, § 8; U.S. Const. Amd. 14, § 1)

(Against all Respondents)

21. TWA repeats and re-alleges each and every allegation contained in Paragraphs 1 through 20 as if fully set forth herein.

22. TWA has a right to be free of arbitrary imposition of State regulations and administrative fees or penalties are imposed without having first been adequately presented to TWA by authorized legal process and supported by substantial evidence.

23. The NSEC Final Decision has caused significant harm to TWA and prejudiced substantial rights of TWA and will cause serious harm to the ability of TWA to conduct its business and will have a disproportionate adverse impact on TWA.

24. The NSEC Final Decision is not rationally calculated to further the

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1 State's interest in reducing air quality emissions. Instead, the NSEC Final Decision is made upon
2 unlawful procedure, is arbitrary, capricious, and issued in violation of applicable law. Further, the
3 allegations and administrative fines and penalties issued under the NSEC Final Decision are not
4 supported by substantial evidence and constitute an abuse of discretion.

5 25. For these reasons, the NSEC Final Decision has been issued in violation of and
6 constitutes substantive violation of the Due Process Clauses of the California and United
7 States Constitutions. (Nev. Const. Art. 1 § 8; U.S. Const. Amd. 14, § 1.)

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Petitioner Tahoe Western Asphalt, LLC requests relief from this Court as
10 follows:


- 11 1. For an order pursuant to NRS 233B.135 setting aside the entire NSEC Final Decision,
- 12 remanding the NSEC Final Decision and directing Respondents to evaluate NOAV 2783, NOAV
- 13 2784 and NOAV 2786, respectively, as required under applicable law and properly evaluate the
- 14 evidence allegedly support each NOAV and properly advise TWA of the allegations against it
- 15 and the potential administrative fines resulting from those alleged violations;
- 16 2. For a writ setting aside the NSEC Final Decision and staying enforcement of the NSEC
- 17 Final Decision until such time as Respondents have complied with the requirements of NRS
- 18 233B.135, and the requirements of the Due Process clauses of the Nevada and United States
- 19 Constitutions;
- 20 3. For all costs of suit herein incurred;
- 21 4. For reasonable attorneys' fees;
- 22 5. For such other and further relief as the Court may deem proper.

23 DATED: January 11, 2021

LANAK & HANNA, P.C.

24 By: _____
25 THOMAS M. PADIAN

LAW OFFICES OF DAVID R. JOHNSON, PLLC

26 
27 By: _____
28 DAVID R. JOHNSON
Attorneys for Plaintiff/Petitioner
TAHOE WESTERN ASPHALT, LLC

AFFIRMATION


I the undersigned hereby affirm that this Petition, including any exhibits thereto, hereby submitted for filing does not contain the personal information of any person or persons.

DATED: January 11, 2021

LANAK & HANNA, P.C.

By: _____
THOMAS M. PADIAN

LAW OFFICES OF DAVID R. JOHNSON, PLLC

By:  _____
DAVID R. JOHNSON

Attorneys for Plaintiff/Petitioner
TAHOE WESTERN ASPHALT, LLC

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VERIFICATION

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1. I, Robert Matthews, am the Owner and an Officer of Petitioner Tahoe Western Asphalt, LLC, and authorized to make this verification on its behalf.

2. I have read the foregoing Petition. All facts alleged in the Petition are true of my own personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

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

Executed this 11th day of January 2021 at Carson City, Nevada.

DATED: January 11, 2021

TAHOE WESTERN ASPHALT, LLC,

By: _____
ROBERT MATTHEWS

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EXHIBIT 2



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources

Steve Sisolak, Governor
Bradley Crowell, Director
Greg Lovato, Administrator

September 23, 2020

Robert Matthews
Owner
Tahoe Western Asphalt, LLC
PO Box 21645
Carson City, NV 89721



RE: Renewal of Class II Air Quality Operating Permit AP1611-3748, FIN A1969 – Tahoe Western Asphalt

Dear Mr. Matthews:

It's time to renew your 5-year operating permit issued by the Nevada Division of Environmental Protection – Bureau of Air Pollution Control. Your permit was issued May 23, 2016 and will expire on May 23, 2021.

Follow 3 steps to renew your permit and avoid tedious interruptions or violations:

- 1. Complete a Class II renewal application:** Make sure the information is up to date and reflects new state or federal requirements that apply to your facility. Your renewal application follows the same requirements as an application for a new operating permit, so you *cannot* simply re-submit your application from five years ago. You may need to include an environmental evaluation (i.e. air model/analysis) that reflects the most current information available. Your facility is not eligible for an Administrative Renewal.
- 2. Submit your application:** Forward your application to NDEP by March 14, 2021 or at least 70 days before the permit expires. See below for a web link to application instructions and forms.
- 3. Pay the renewal fee:** As required by law, and defined under Nevada Revised Administrative Code (NAC) 445B.327 for renewal of Class II permits.

We encourage you to begin this renewal process soon to avoid a stop order, violation, or penalty. You will have to apply for an entirely new permit—with an associated fee defined under Nevada Revised Administrative Code (NAC) 445B.327—if your renewal application is late. What's more, you won't be able to operate your facility while a new permit application is being processed.

And remember—*renewing* a permit is different than *revising* a permit. Each has its own application, processing, and fee requirements. You may not, for example, revise emission units and processes in your renewal application. You *may* renew and revise your permit at the same time; just be sure to provide the corresponding applications and fees for each.

As always, NDEP staff are available to help you. Contact Sarah Itskin at (775) 687-9553 or sitskin@ndep.nv.gov. In addition, if you need assistance with the application, the Business Environmental Program is available to help and can be reached at (800) 882-3233, help@unrbep.org, or visit www.unrbep.org. Application forms and instructions can be found at <http://ndep.nv.gov/air/permitting/download-permit-forms>.

Sincerely,

Ashley Taylor, P.E.
Supervisor, Permitting Branch
Bureau of Air Pollution Control

AT/am

EXHIBIT 3

2/26/20 Agenda w/Supporting Materials

CARSON CITY CONSOLIDATED MUNICIPALITY NOTICE OF MEETING OF THE PLANNING COMMISSION

Day: Wednesday

Date: February 26, 2020

Time: 5:00 PM

Location: Community Center, Sierra Room

851 East William Street

Carson City, Nevada

PLANNING COMMISSION AGENDA

A. Roll Call, Determination of a Quorum and Pledge of Allegiance

B. Public Comment**

The public is invited at this time to comment on and discuss any topic that is relevant to, or within the authority of the Planning Commission, including any matter that is not specifically included on the agenda as an action item.

C. For Possible Action: Approval of the Minutes – January 29, 2020, Workshop Minutes
(</home/showpublisheddocument?id=69298>): January 22, 2020 (</home/showpublisheddocument?id=69298>).

D. Modification of Agenda

Items on the agenda may be taken out of order; the public body may combine two or more agenda items for consideration; and the public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

E. Meeting Items

PUBLIC HEARING

E.1 AB-2020-0001 For Possible Action: Discussion and possible action regarding a right-of-way and access easement abandonment on property located at 4110 County Line Road, APN 007-201-05.
(</home/showpublisheddocument?id=69304>).

Summary: In 2004, the City, through a gift deed of easement, acquired a permanent well and access easement and right-of-way for maintenance of the well, pipeline, and electrical conduits. In August 2019, the Board of Supervisors authorized the well to be returned to private ownership. As the City no longer owns the well, it no

longer needs the access and right-of-way easement. The Board of Supervisors is authorized to abandon a right-of-way. The Planning Commission makes a recommendation to the Board.

PUBLIC HEARING

E.2 LU-2019-0082* For Possible Action: Discussion and possible action regarding a request for a Special Use Permit for a sign on property zoned Public Community (PC), located at 813 North Carson Street (Children's Museum), APN 002-164-01. (/home/showpublisheddocument?id=69306) (Hope Sullivan, hsullivan@carson.org)

Summary: The applicant is proposing to erect a 3.5-foot wide by 3-foot 7-inch tall sign at the northwest corner of the property. The sign will include a video screen. The overall sign height will not exceed 8 feet. Per CCMC 18.04.180, signs in the public community zoning district are subject to a special use permit. The Planning Commission is authorized to approve a special use permit.

PUBLIC HEARING

E.3 ZA-2020-0002 For Possible Action: Discussion and possible action regarding a zoning map amendment to change the zoning from Conservation Reserve to Single Family 1 Acre (SF1A) for properties created as part of the North Canyon Estates and located on the south side of Kelvin Road, and on Cachet Court, Corrinne Court, Gabrielle Court, and Danielle Drive, APNs 008-816-07 through 008-816-35 and 008-814-05 through 008-814-13. (/home/showpublisheddocument?id=69308) (Hope Sullivan, hsullivan@carson.org)

Summary: The subject lots were created in 1993 and are approximately one acre each. The subject properties are zoned for a 20-acre lot minimum size. Based on a use permit issued in 1979 and early 1980, these lots have been subject to the standards of the SF1A zoning district. The proposed map amendment will make the zoning consistent with the regulations being applied. The Board of Supervisors is authorized to amend the zoning map. The Planning Commission makes a recommendation to the Board.

E.4 LU-2020-0001 For Possible Action: Discussion and possible action regarding a request for a Special Use Permit for a 34-unit townhome development on property zoned Retail Commercial (RC), located on the northwest corner of Clearview Drive and Silver Sage Drive, APN 009-125-12. (/home/showpublisheddocument?id=69310) (Heather Ferris, hferris@carson.org)

Summary: See summary for item E.5.

E.5 SUB-2020-0001 For Possible Action: Discussion and possible action regarding a request for a Tentative Subdivision Map to create 34 single family lots on a 2.75-acre parcel zoned Retail Commercial (RC) known as Silver View Townhomes, located on the northwest corner of Clearview Drive and Silver Sage Drive, APN 009-125-12. (/home/showpublisheddocument?id=69310) (Heather Ferris, hferris@carson.org)

Summary: The applicant is proposing a 34-unit townhome development on property zoned Retail Commercial (LU-2020-0001). Carson City Municipal Code (CCMC) 18.04.130.03 allows for single family dwellings in the RC

zoning district with a Special Use Permit, subject to meeting the supplemental standards for residential development in a non-residential district as outlined in Carson City Development Standards (CCDS) 1.18. The applicant is also proposing a Tentative Subdivision Map to create 34 single family lots (SUB-2020-0001). The lots will range in size from 1,746 square feet to 2,160 square feet with an average size of 1,845 square feet. The Planning Commission has the authority to approve the Special Use Permit. The Board of Supervisors is authorized to approve a Tentative Subdivision Map, following recommendation from the Planning Commission.

-- THE FOLLOWING ITEM WILL BE HEARD NO EARLIER THAN 6:00 PM --

PUBLIC HEARING

E.6 SUP-10-115-2 For Possible Action: Discussion and possible action regarding the review of a Special Use Permit for an asphalt plant and aggregate crushing facility on property zoned General Industrial, located at 8013 Highway 50 East, APN 008-611-35. (/home/showpublisheddocument?id=69312).

Summary: On January 26, 2011, the Planning Commission approved a Special Use Permit for an asphalt plant and aggregate crushing facility on the subject property. In 2018, the Planning Commission approved an amendment to the Special Use Permit. As part of that approval, the Planning Commission requested to review the Special Use Permit in one year to determine the adequacy of the conditions of approval. At its meeting of December 17, 2019, the Planning Commission conducted its one-year review, found the conditions to be inadequate to meet the findings, and modified the conditions. The applicant appealed the Planning Commission decision. Since the Planning Commission December 17, 2019 meeting, the staff has identified new information that it would like to present to the Planning Commission as part of its review of the Special Use Permit. The Planning Commission will conduct a public hearing, and may modify the existing conditions of approval of the Special Use Permit as necessary to meet the required findings of fact.

E.7 For Possible Action*: Discussion and possible action regarding the election of a Planning Commission Chair and Vice-Chair for a term beginning at the Planning Commission meeting of February 2020.

Summary: The Planning Commission Bylaws provides that elections for a Chair and Vice-Chair be held in January to begin serving a one-year term beginning in February.

Agenda items with an asterisk () indicate that final action will be taken unless appealed or otherwise announced. The Planning Commission's "ACTION" may include approval, approval with conditions, denial, continuance, or tabling of an item.

Appeal of a Commission item: An appeal must be submitted to the Planning Division within 10 days for the Commission's action. In order to be part of the administrative record regarding an appeal of an item on the

agenda, you must present your comments at the podium or have previously sent correspondence to the Planning Division or have spoken to staff regarding an item on this agenda. For information regarding an appeal of a Commission decision, please contact Lee Plemel, Community Development Director, at 775-887-2180, via e-mail at lplemel@carson.org, or via fax at 775-887-2278.

F. Staff Reports (non-action items)

F.1 - Director's report to the Commission. (Lee Plemel)

- Future agenda items.
- Commissioner reports/comments.

G. Public Comment**

The public is invited at this time to comment on and discuss any topic that is relevant to, or within the authority of the Planning Commission including any matter that is not specifically included on the agenda as an action item.

H. For Possible Action: Adjournment

** PUBLIC COMMENT: The Commission will provide at least two public comment periods in compliance with the minimum requirements of the Open Meeting Law prior to adjournment. In addition, it is Carson City's aspirational goal to also provide for item-specific public comment as follows: In order for members of the public to participate in the public body's consideration of an agenda item, the public is strongly encouraged to comment on an agenda item when called for by the Chair during the item itself. No action may be taken on a matter raised under public comment unless the item has been specifically included on the agenda as an item upon which action may be taken. Comments may be limited to three minutes per person or topic at the discretion of the Chair in order to facilitate the meeting.

For Further Information

If you would like more information about an agenda item listed above, please contact the staff member listed at the end of the particular item in which you are interested at 775-887-2180. Contact the Planning Division at 775-887-2180 or planning@carson.org if you would like copies of supporting materials for an agenda item. Supporting materials for the meeting are available in the Planning Division office located at 108 E. Proctor Street, Carson City or at <https://carson.org/government/meeting-information/agendas>. All written comments to the Planning Commission regarding an item must be submitted to the Planning Division by 4:00 p.m. on the day prior to the Commission's meeting to ensure delivery to the Commission before the meeting.

The Commission is pleased to make reasonable accommodations for members of the public who wish to attend the meeting and need assistance. If special arrangements for the meeting are necessary, please notify the Planning Division in writing at 108 E. Proctor St., Carson City, Nevada 89701, or call 775-887-2180, as soon as possible.

This agenda has been posted at the following locations:

City Hall, 201 North Carson Street

Dept. of Public Works, Corporate Yard Facility, 3505 Butti Way

Community Center-Sierra Room, 851 East William Street

Community Development Department, 108 E. Proctor Street

Parks and Recreation, 3303 Butti Way, Building 9

This agenda is also available online at:

Carson City Website - <https://carson.org/government/meeting-information/agendas>

State Website - <https://notice.nv.gov>

EXHIBIT 4



Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180 – Hearing Impaired: 711
planning@carson.org
www.carson.org/planning

MEMORANDUM

Planning Commission Meeting of February 26, 2020

TO: Planning Commission

Item E-6

FROM: Hope Sullivan, AICP
Planning Manager

DATE: February 19, 2020

SUBJECT: SUP-10-115-2 For Possible Action: Discussion and possible action regarding the review of a Special Use Permit for an asphalt plant and aggregate crushing facility on property zoned General Industrial, located at 8013 Highway 50 East, APN 008-611-35.

***Summary:** On January 26, 2011, the Planning Commission approved a Special Use Permit for an asphalt plant and aggregate crushing facility on the subject property. In 2018, the Planning Commission approved an amendment to the Special Use Permit. As part of that approval, the Planning Commission requested to review the Special Use Permit in one year to determine the adequacy of the conditions of approval. At its meeting of December 17, 2019, the Planning Commission conducted its one-year review, found the conditions to be inadequate to meet the findings, and modified the conditions. The applicant appealed the Planning Commission decision. Since the Planning Commission December 17, 2019 meeting, the staff has identified new information that it would like to present to the Planning Commission as part of its review of the Special Use Permit. The Planning Commission will conduct a public hearing, and may modify the existing conditions of approval of the Special Use Permit as necessary to meet the required findings of fact.*

Recommended motion:

"I move to modify Condition 17 of the Conditions of Approval voted on by the Planning Commission at its meeting of November 19, 2019 to restore it to the condition of approval established on October 24, 2018 to state "The operator shall utilize Ecosorb in operations to suppress odors." and to add Condition 20 to state "City Code Enforcement staff will monitor off-site odors a minimum of three times a month, and maintain a detailed log. The log will be presented to the Planning Commission at its October 2020 meeting. Notwithstanding this, if City Code Enforcement staff observes odors from the plant in the residential areas of Moundhouse three times, the review of the Special Use Permit will be scheduled for the next available Planning Commission meeting for review of the Special Use Permit."

Noticing

On February 7, 2020, notice of the public hearing was mailed to 101 property owners within 7500 feet of the subject property. This notice also appeared in the newspaper, on bulletin boards throughout the City, and on the City's and State's websites.

On February 7, 2020, a letter was hand delivered to Robert Matthews of Tahoe Western Asphalt advising him that this item would be before the Planning Commission at its meeting of February 26, 2020. The same letter was emailed to Mr. Matthews and his attorney on February 7, 2020.

Information Since the November 19, 2019 Meeting

Since the meeting of November 19, 2019, the business owner has filed an appeal of the Planning Commission's decision. At its meeting of February 6, 2020, the Board of Supervisors considered the appeal and, in accordance with the recommendation of staff, referred the matter back to the Planning Commission to give staff the opportunity to provide the Planning Commission with additional information.

Since the meeting of November 19, 2019, City staff has followed up with the staff at the City of Fernley, NV as well as toured the Marathon Petroleum Company facility in Fernley. The City Manager in Fernley verified the information that City staff learned from Nevada Department of Environmental Protection (NDEP) staff. Essentially, the odors from the Fernley plant were overwhelming, the plant installed new equipment (the Regenerative Thermal Oxidizer), and the odors have been substantially eradicated.

On January 9, 2020, City staff met with the manager, and toured the Marathon Petroleum Company facility in Fernley. During this visit, the manager explained that the Regenerative Thermal Oxidizer was the correct equipment for the facility as the facility makes a binder, and is "hot" at all times. This is in contrast to a plant like Tahoe Western Asphalt where the plant is "heated up" when there is an order for asphalt, but is not maintained in a "hot" state at all times. Therefore, staff is no longer recommending the incorporation of a regenerative thermal oxidizer.

Staff cannot recommend how the asphalt plant should be designed and operated. Staff has reached out to other professionals with experience working with asphalt plants to try to understand how to address the odors. The answer is not easy, and it is up to the operator to determine how to design and operate the facility. Rather, staff recommends that the conditions of approval focus on performance criteria. With respect to odors, it is very difficult to identify measures. Therefore, the staff is recommending that between now and the Planning Commission meeting of October 2020, City code enforcement staff visit the residential areas in Moundhouse at least three times a month to determine if there are odors from the asphalt plant. A log will be maintained and provided to the Planning Commission at its October 2020 meeting. If code enforcement observes the odors in the area three times, the Special Use Permit will be scheduled for the next available Planning Commission meeting.

In terms of on-going Code Enforcement, between November 6, 2019 and February 13, 2020, code enforcement has received nineteen complaints, 17 were odor related and 2 were related to hours of operation. Code Enforcement staff visited Moundhouse twice during this time period, and did not detect any odors.

Staff in Lyon County is not aware of any complaints / issues related to Tahoe Western Asphalt since November 6, 2019.

A December 4, 2019 letter from the Chief of the Bureau of Air Pollution Control of NDEP states that Tahoe Western Asphalt's Air Quality Operating Permit is in good standing.

In a February 14, 2020 letter from Jeremy Clarke, representative for Tahoe Western Asphalt (TWA), Mr. Clarke writes "TWA is implementing new equipment which will help the plant run

cleaner and more efficient. These changes will also reduce emissions and any perceived odors. TWA is in the process of drafting the plans with its consultants, which will then be submitted to the NDEP for approval.”

On February 18, Robert Matthews of Tahoe Western Asphalt sent a series of graphics to NDEP and to the City, seemingly proposing to add the equipment to the existing systems. NDEP acknowledged receipt of the diagrams, and requested additional information.

Conclusion

Based on new information, staff can no longer recommend the inclusion of the regenerative thermal oxidizer. Staff finds that with respect to odors, a performance measure that odors be controlled is appropriate. The means of determining the adequacy of the odor control is for code enforcement staff to visit the residential areas that are experiencing the odors and determine if the odor can be independently observed.

Attachments:

1. Planning Commission November 18, 2019 Notice of Decision – SUP-10-115-2.
2. Memorandum dated November 6, 2019 from the Planning Manager to the Planning Commission with attachments and late material.
3. Email dated November 19, 2019 from the Supervisor of the Compliance Branch of the Bureau of Air Pollution Control NDEP to the Planning Manager.
4. December 4, 2019 letter from the Chief of the Bureau of Air Pollution Control NDEP to Robert Matthews.
5. Memorandum dated February 13, 2020 from Code Enforcement to the Planning Manager.
6. Email dated February 14, 2020 from Lyon County Senior Planner to the Planning Manager.
7. Email dated February 18, 2020 from Robert Matthews to Planning Manager including diagrams of equipment.
8. Email dated February 18, 2020 from NDEP staff to Robert Matthews commenting on diagrams.
9. Petition submitted by TWA.
10. Letter dated February 14, 2020 from Jeremy Clarke, Simons Hall Johnston representing TWA to the Planning Commission.
11. Email dated February 14, 2020 from NDEP Compliance Inspector to the Planning Manager.
12. Approved Meeting Minutes from Planning Commission meeting of November 19, 2019.

STAFF REPORT FOR THE PLANNING COMMISSION MEETING OF FEBRUARY 24, 2021

FILE NO: LU-2020-0115 (SUP-10-115)

AGENDA ITEM: E.4

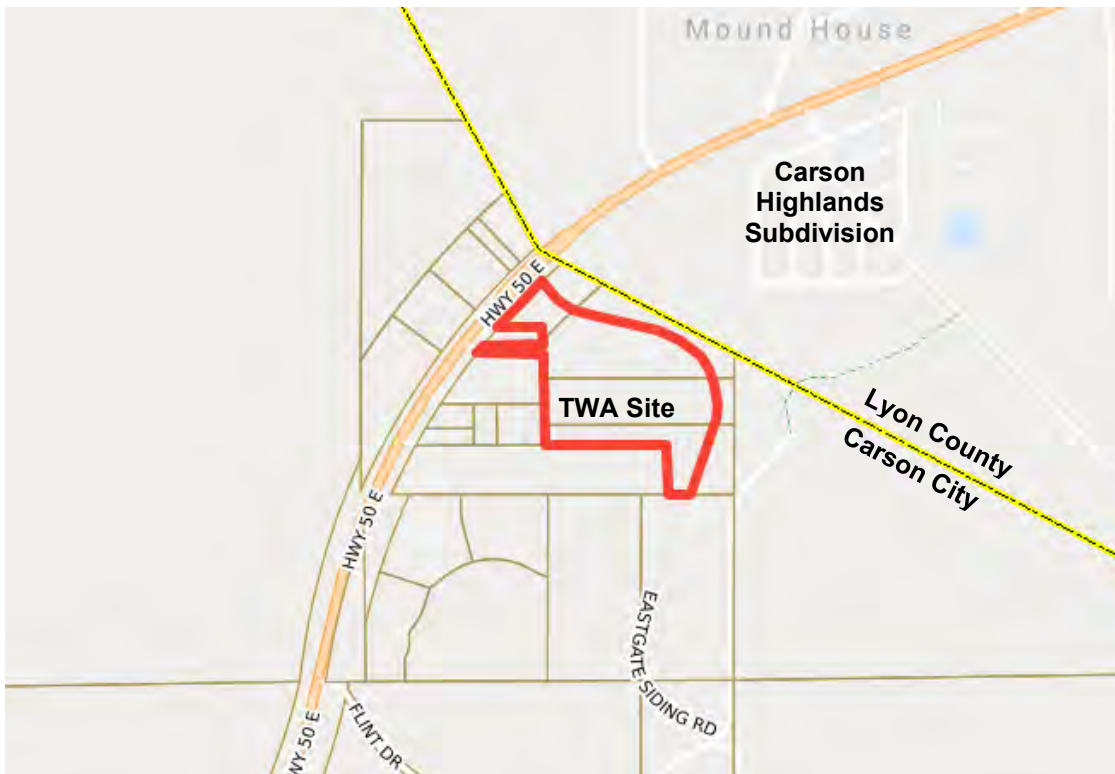
STAFF CONTACT: Lee Plemel, Community Development Director

AGENDA TITLE: For Possible Action: Discussion and possible action regarding the revocation or reexamination of Special Use Permit SUP-10-115 for the asphalt plant located at 8013 Highway 50 East, APNs 008-611-31, -33, -37 and -41. (Lee Plemel, lplemel@carson.org)

STAFF SUMMARY: Pursuant to CCMC 18.02.090, a Special Use Permit may be revoked for good cause including but not limited to failure to comply with any conditions of the permit or any act relating to the Special Use Permit that creates a public nuisance or is detrimental to the public health, safety and welfare. After reviewing evidence related to the operations on October 28, 2020, the Planning Commission directed staff to serve notice to the operator (Tahoe Western Asphalt) to appear before the Commission to address the alleged violations and show cause why the Special Use Permit should not be revoked or reexamined. The Commission may approve the continued operation under the current Special Use Permit, amend conditions of the Special Use permit, revoke (deny) the Special Use Permit, or take other actions pursuant to CCMC 18.02.090.

RECOMMENDED MOTION: “I move revoke SUP-10-115 based on the evidence of failure to comply with the conditions of the permit and creating a public nuisance that is detrimental to the public health, safety and welfare, including emitting noxious odors into surrounding neighborhoods.”

VICINITY MAP:



BACKGROUND:

On December 17, 2019, the Planning Commission directed staff to conduct an investigation regarding the Special Use Permit issued to Tahoe Western Asphalt (“TWA”), pursuant to CCMC 18.02.090 (Revocation or reexamination of variance or special use permit), based on complaints of odors from adjacent residents and allegations of violations of conditions of approval of the permit.

On October 28, 2020, the Planning Commission directed staff to serve notice to TWA to appear before the Commission to address the alleged violations and show cause why the Special Use Permit should not be revoked or reexamined.

On ¹January 6, 2020, the attached “order to appear for show-cause hearing” letter (the “Order”) was sent to TWA in compliance with the notification requirements of CCMC 18.02.090.

The purpose of an order to show cause hearing is to allow the applicant the opportunity to be heard, present witnesses and respond to any witnesses regarding the alleged violations of the Special Use Permit. After the conclusion of discussion and public testimony, the possible actions that the Commission may take regarding the Special Use Permit include approval, approval with conditions, denial, modification of permit conditions of approval, or limited suspension.

Refer to the attached staff report and supporting material from the Planning Commission meeting of October 28, 2020, for a complete background regarding past approvals relating to the Special Use Permit, investigation findings and supporting documentation. Note that the stop work order issued by the Nevada Department of Environmental Protection (“NDEP”) on August 26, 2020, to TWA is still in effect and TWA has not operated the asphalt plant since then.

INVESTIGATION FINDINGS FOR SHOW-CAUSE HEARING:

Based on the results of the investigation into compliance with the conditions of the Special Use Permit, the applicant must address the following findings and alleged violations:

1. Tahoe Western Asphalt has been in violation of its NDEP permit in violation of SUP condition number 12. TWA was cited and fined by NDEP for violations between January 2017 and March 2018. TWA received a Notice of Violation from NDEP dated August 14, 2020, and a stop-work order, dated August 14, 2020, with a demand to bring the operation into compliance with NDEP permit requirements or shut down the operation by August 26, 2020. TWA received a stop-work order dated August 26, 2020, requiring TWA to cease operations due to non-compliance with NDEP permit regulations. SUP-10-115 condition of approval number 12 states:

12. The applicant shall comply with applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.

2. TWA has violated the requirement in condition number 17, which requires odors to be controlled and prohibits odors from being detected beyond the property line. Carson City Code Enforcement staff detected odors from the residential neighborhood to the east of the TWA plant on 6 of 17 site visits between February 18, 2020, and July 14, 2020. On four of these occasions Code Enforcement staff characterized the odors as “strong” or “very strong.” In addition, dozens of complaints from surrounding residents are

1. Editor's note: Date was corrected on the record, notices were sent February 2 & 4, 2021, for the 2/24/21 Commission meeting.

documented by City Code Enforcement, Lyon County Code Enforcement, and NDEP staff. SUP-10-115 condition of approval number 17 states:

17. The operator shall utilize Ecosorb in operations to suppress odors. The operation of the facility shall require that odors are not detectable beyond the property line. [Note: The deleted verbiage was effective before June 4, 2020, and the revised condition became effective after the Board of Supervisors upheld the modification on appeal on June 4, 2020.]

3. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation.

LEGAL REQUIREMENTS:

CCMC 18.02.080 (Special Use Permits), CCMC 18.02.090 (Revocation or reexamination of variance or special use permit), and CCMC 18.02.095 (Show cause procedure of variance or special use permit).

Carson City Municipal Code 18.02.090 states, in applicable part:

Any of the following reasons or occurrences are grounds for a hearing on revocation or reexamination of a variance or special use permit, pursuant to Title 18 (Show Cause Procedures):

1. A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit; . . .

5. Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare.

Carson City Municipal Code 18.02.095(2) establishes the process for this show-cause hearing. It states:

2. Hearing.

a. At the hearing on the order to show cause, the applicant and the complainant, if there is one, may be represented by attorneys, present testimony and question witnesses. If the hearing is pursuant to a complaint, the complainant must also be present.

b. After the conclusion of discussion and public testimony, the possible actions that the commission may take include approval, approval with conditions, denial, modification of permit conditions of approval, limited suspension and continuance with the concurrence of the applicant.

c. Within 20 days after the hearing, the commission must render its decision as to revocation/reexamination and give notice of decision thereof to the applicant. An order of revocation requires a majority vote of the commission members in attendance.

Carson City Municipal Code 18.02.095(3) establishes procedures for the appeal of the Planning Commission's decision regarding a show-cause hearing to the Board of Supervisors. It states:

3. *Appeal of Show Cause Hearing Determination.*

a. *Any affected person or entity may appeal any show cause hearing decision of the commission to the board provided the appellant has participated in the administrative process prior to filing the appeal.*

b. *The affected person or entity must request appeal by providing written notice of appeal to the director within ten days after issuance of the notice of the commission decision by the director.*

c. *The director must schedule the appeal for the next available board meeting following receipt of the notice of appeal.*

d. *Appellant may request one, 10-day extension of time by written application to the director but in no case may the board hear the appeal unless the appeal is heard not later than 45 days after issuance of the notice of decision.*

e. *The applicant's notice of appeal must provide the necessary facts or other information that supports the appellant's contention that the staff or commission erred in the commission's consideration of findings in supporting its decision.*

f. *The appeal must specify the project or decision for which the appeal is being requested. The appeal must indicate which aspect of the decision or findings are being appealed. No other aspect of the appealed decision may be heard. Only issues discussed at the commission meeting may be appealed to the board. If new information is submitted by the board meeting which was not considered by the commission, the board, prior to taking action, may refer the matter back to the commission for further review and possible action.*

g. *An appeal decision from the board is final. Any further appeal of the board's decision must be in the court of competent jurisdiction within the time frames established by NRS.*

ALTERNATIVES:

After hearing the applicant's responses to the alleged violations and considering the evidence presented at the hearing, the Commission may take any of the following actions:

1. Approve the Special Use Permit in effect to continue, unmodified (based on the last approval by the Commission on February 26, 2020).
2. Approve the Special Use Permit with additional or modified conditions to address issues or concerns raised regarding compliance with the current conditions of approval.
3. Suspend the Special Use Permit for a specific time period, after which the Special Use Permit in effect would be continued either unmodified or with modified conditions of approval.
4. Deny the Special Use Permit. The effect of this would be that there would be no valid Special Use Permit for the operation of an asphalt plant at the subject property, and any future asphalt plant use on the property would need a new Special Use Permit in compliance with all applicable codes at the time of application.

Attachments:

- 1) February 2 & February 4, 2021, notices of order to appear for show cause hearing
- 2) Planning Commission packet from meeting of October 28, 2020



108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180
Hearing Impaired: 711

COMPLAINT AND NOTICE OF ORDER TO APPEAR FOR SHOW CAUSE HEARING

Date: February 2, 2021

Subject Special Use Permit: SUP-10-115

Applicant: Robert Matthews

Name and Address of Business:

Tahoe Western Asphalt, LLC
Attn: Robert Matthews
PO Box 21645
Carson City, NV 89721

Copy to:

Lanak & Hanna
Attn: Mark D. Johnson, Senior Counsel
625 The City Drive S., Ste. 190
Orange, CA 92868

YOU OR YOUR REPRESENTATIVE ARE ORDERED TO APPEAR AND SHOW CAUSE WHY YOUR SPECIAL USE PERMIT (SUP) SHOULD NOT BE REVOKED OR REEXAMINED FOR FAILING TO COMPLY WITH THE CONDITIONS OF THE SPECIAL USE PERMIT.

Show Cause Hearing Date, Time and Location: The Planning Commission meeting of Wednesday, February 24, 2021, in the Community Center, Sierra Room, 851 William Street, Carson City, Nevada. The meeting start time has not yet been set, but your item will not be heard before 5:00 PM.

Allegations of Grounds for Revocation of Special Use Permit:

Carson City Municipal Code (CCMC) Section 18.02.090 (Revocation or reexamination of variance or special use permit) provides for reasons for which a Special Use Permit may be revoked or reexamined, which include (in applicable part):

1. *A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit; . . .*
5. *Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare.*

On December 17, 2019, the Planning Commission reviewed the record of complaints regarding alleged violations of SUP-10-115 conditions of approval by Tahoe Western Asphalt (TWA) and directed staff to conduct an investigation regarding the alleged violations, including but not limited to ongoing odor complaints, working within the permitted hours of operation, and compliance with Nevada Department of Environmental Protection (NDEP) permits.

On October 28, 2020, the Planning Commission reviewed the evidence provided as part of the investigation into alleged violations of the SUP and directed Planning Division staff to serve notice to the holder of the SUP to appear before the Commission to address the alleged violations of the SUP.

Specifically, the violations below are alleged and must be addressed in a response to the Planning Commission.

1. Tahoe Western Asphalt has been in violation of its NDEP permit in violation of SUP condition number 12. TWA was cited and fined by NDEP for violations between January 2017 and March 2018. TWA received a Notice of Violation from NDEP dated August 14, 2020, and a stop-work order, dated August 14, 2020, with a demand to bring the operation into compliance with NDEP permit requirements or shut down the operation by August 26, 2020. TWA received a stop-work order dated August 26, 2020, requiring TWA to cease operations due to non-compliance with NDEP permit regulations. SUP-10-115 condition of approval number 12 states:
 12. *The applicant shall comply with applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.*
2. The TWA operation has violated the requirement in condition number 17, which requires odors to be controlled and prohibits odors from being detected beyond the property line. Carson City Code Enforcement staff detected odors from the residential neighborhood to the east of the TWA plant on 6 of 17 site visits between February 18, 2020, and July 14, 2020. On four of these occasions Code Enforcement staff characterized the odors as “strong” or “very strong.” In addition, dozens of complaints from surrounding residents are documented by City Code Enforcement, Lyon County Code Enforcement, and NDEP staff. SUP-10-115 condition of approval number 17 states:
 17. ~~The operator shall utilize Ecosorb in operations to suppress odors. The operation of the facility shall require that odors are not detectable beyond the property line. [Note: The deleted verbiage was effective before June 4, 2020, and the revised condition became effective after the Board of Supervisors decision on the appeal on June 4, 2020.]~~
3. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation.

Show Cause Hearing:

1. At the hearing on the order to show cause, you or your representative shall have an opportunity to be heard, present witnesses and respond to any witnesses against you at the show cause hearing. You may be represented by attorneys, present testimony and question witnesses. After the conclusion of discussion and public testimony, the possible actions that the commission may take regarding the Special Use Permit include approval, approval with conditions, denial, modification of permit conditions of approval, or limited suspension.

The final agenda and staff report for the item will be emailed to you approximately 6-7 days before the February 24, 2021, meeting date.

Community Development



Lee Plemel, Director



108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180
Hearing Impaired: 711

COMPLAINT AND NOTICE OF ORDER TO APPEAR FOR SHOW CAUSE HEARING

Date: February 4, 2021

Subject Special Use Permit: SUP-10-115

Applicant: Robert Matthews

Name and Address of Business:

Tahoe Western Asphalt, LLC
Attn: Robert Matthews
8013 Highway 50 East
Carson City, NV 89701

YOU OR YOUR REPRESENTATIVE ARE ORDERED TO APPEAR AND SHOW CAUSE WHY YOUR SPECIAL USE PERMIT (SUP) SHOULD NOT BE REVOKED OR REEXAMINED FOR FAILING TO COMPLY WITH THE CONDITIONS OF THE SPECIAL USE PERMIT.

Show Cause Hearing Date, Time and Location: The Planning Commission meeting of Wednesday, February 24, 2021, in the Community Center, Sierra Room, 851 William Street, Carson City, Nevada. The meeting start time has not yet been set, but your item will not be heard before 5:00 PM.

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On December 17, 2019, the Planning Commission reviewed the record of complaints regarding alleged violations of SUP-10-115 conditions of approval by Tahoe Western Asphalt (TWA) and directed staff to conduct an investigation regarding the alleged violations, including but not limited to ongoing odor complaints, working within the permitted hours of operation, and compliance with Nevada Department of Environmental Protection (NDEP) permits.

On October 28, 2020, the Planning Commission reviewed the evidence provided as part of the investigation into alleged violations of the SUP and directed Planning Division staff to serve notice to the holder of the SUP to appear before the Commission to address the alleged violations of the SUP.

Specifically, the violations below are alleged and must be addressed in a response to the Planning Commission.

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12. The applicant shall comply with applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.
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3. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property, in violation of CCMC 18.02.090(5), due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation.

Show Cause Hearing:

At the hearing on the order to show cause, you or your representative shall have an opportunity to be heard, present witnesses and respond to any witnesses against you at the show cause hearing. You may be represented by attorneys, present testimony and question witnesses. After the conclusion of discussion and public testimony, the possible actions that the commission may take regarding the Special Use Permit include approval, approval with conditions, denial, modification of permit conditions of approval, or limited suspension.

The final agenda and staff report for the item will be emailed to you approximately 6-7 days before the February 24, 2021, meeting date.

Community Development



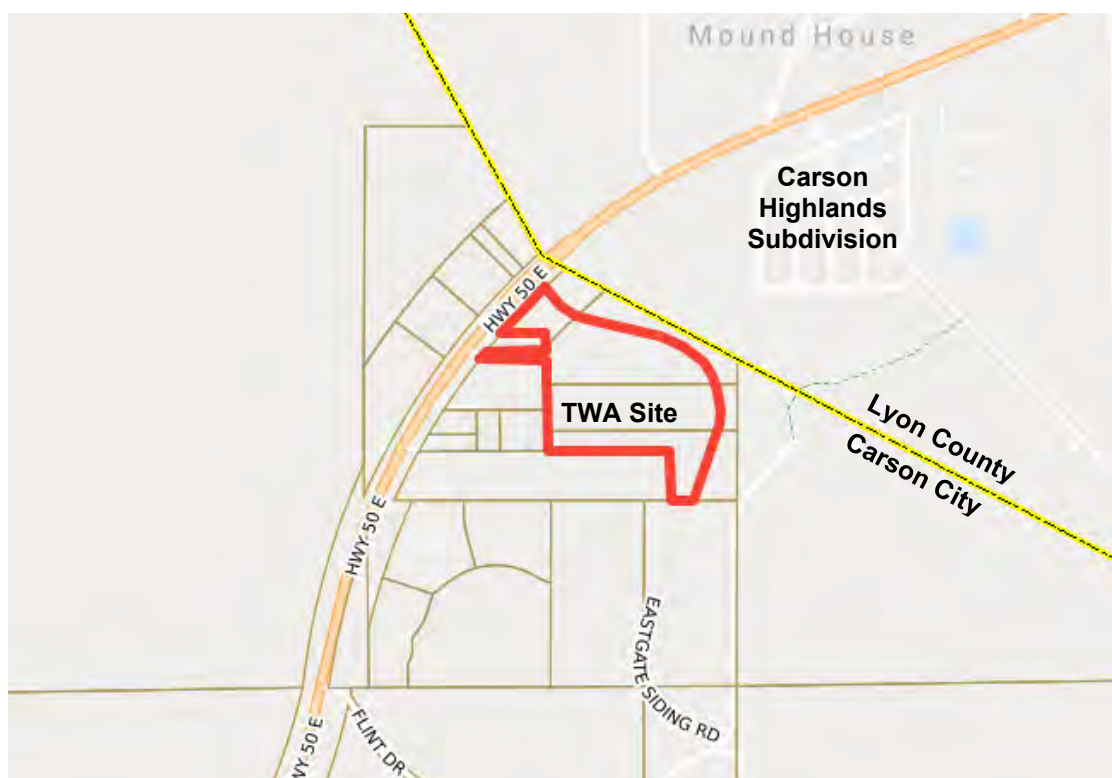
Lee Plemel, Director

STAFF REPORT FOR THE PLANNING COMMISSION MEETING OF OCTOBER 28, 2020**FILE NO:** LU-2020-0115 (SUP-10-115)**AGENDA ITEM:** E.7**STAFF CONTACT:** Lee Plemel, Community Development Director

AGENDA TITLE: For Possible Action: Discussion and possible action regarding the findings of the investigation into Special Use Permit SUP-10-115 and possible direction to staff to serve the applicant with an order to show cause why the Special Use Permit for the asphalt plant located at 8013 Highway 50 East, APNs 008-611-31, -33, -37 and -41, should not be revoked or reexamined based on the results of the investigation initiated by the Planning Commission on December 17, 2019. (Lee Plemel, lplemel@carson.org)

STAFF SUMMARY: Pursuant to CCMC 18.02.090, a Special Use Permit may be revoked for good cause including but not limited to failure to comply with any conditions of the permit and any act relating to the Special Use Permit that creates a public nuisance or is detrimental to the public health, safety and welfare. If the Planning Commission determines that grounds for revocation or reexamination of the Special Use Permit exist, the Commission may order a show-cause hearing, which would be at a future meeting. If a show-cause hearing is ordered, the applicant would have the opportunity to present evidence at that meeting as to why the Special Use Permit should not be revoked or reexamined.

RECOMMENDED MOTION: "I move to direct staff to serve the applicant with a show-cause order based on the evidence presented at this meeting, including failure to comply with the conditions of the Special Use Permit and creating a public nuisance."

VICINITY MAP:

BACKGROUND:

On December 17, 2019, the Planning Commission directed staff to conduct an investigation regarding the Special Use Permit issued to Tahoe Western Asphalt, pursuant to CCMC 18.02.090 (Revocation or reexamination of variance or special use permit), based on complaints of odors from adjacent residents and allegations of violations of conditions of approval of the permit. The purpose of this item is for the Planning Commission to review the findings of the investigation and determine if grounds exist to initiate show-cause proceedings for the possible revocation of the Special Use Permit.

Following is a summary of approvals and other actions related to asphalt plant operations on the subject site.

The subject site has been used since 1984 for a portable rock crushing operation as approved under Special Use Permit U-83-37.

On January 26, 2011 the Planning Commission approved a Special Use Permit (SUP-10-115) for an asphalt plant and aggregate crushing facility on the subject site. Tahoe Western Asphalt (“TWA”) has been the operator of the asphalt plant under that Special Use Permit.

In January 2017 TWA was cited and assessed fines of \$1,750 by the Nevada Department of Environmental Protection (NDEP) for failing to notify NDEP of the initial startup. Between January 2017 and March of 2018, NDEP also cited TWA seven times for violations related to air quality and assessed fines of \$61,055.

On October 24, 2018 the Planning Commission, at the applicant’s request, approved a modification to the Special Use Permit to allow for additional hours of operation. This modification was subject to additional conditions including the construction of a roof over the truck loading chute area; installation of a water fogging system at drop points when material drops to a different part of the equipment and is exposed to air; installation and maintenance of a vent condenser; and utilization of Ecosorb to suppress odors. Additionally, the Planning Commission conditioned the approval on a one-year review of the modified Special Use Permit primarily to evaluate the impacts from odors.

The October 24, 2018 modification request stemmed primarily from issues the business had with operating outside of the permitted hours as required by the Special Use Permit. Between February and September of 2018, City’s Code Enforcement staff issued three notices of violation for operation outside of approved hours. Although only three notices were issued, 56 complaints were received during this period primarily related to working outside of hours of operation and odors.

On November 19, 2019 the Planning Commission conducted a one-year review of the Special Use Permit. During this meeting staff informed the Planning Commission of the 99 complaints that had been received following the October 24, 2018 meeting. Ninety-eight of the complaints were about odors, and one complaint was regarding hours of operation. The City’s Code Enforcement staff documented six visits to Mound House following the complaints. During one visit, there was no odor detected, during four visits there was a faint odor detected, and during one visit there was a strong odor detected. NDEP also received 127 complaints during the year following the October 24, 2018 meeting. Although strong odors and opacity were observed, the threshold for a violation of NDEP standards was not met.

Many residents from the surrounding residential area (in Lyon Counter immediately to the east of the TWA facility) were present at the November 19, 2019 meeting. During the meeting they voiced their concerns and complaints regarding odors and hours of operation. Many of them also indicated their concerns with the long-term health implications that may result from living in close proximity to an asphalt plant.

Based on the public testimony received at the November meeting, the Planning Commission found the Ecosorb product was not effective in reducing odors and, based on information provided by NDEP staff to City staff, required utilization of a regenerative thermal oxidizer to address odor. The Commission required the equipment to be installed immediately, and that further operation without the regenerative thermal oxidizer is unlawful. The Planning Commission also eliminated the ability to perform work on Sundays and evenings up to 30 times per calendar year and included a condition to perform a review of the Special Use Permit in October 2020. The applicant appealed this decision of the Planning Commission to the Board of Supervisors.

On December 17, 2019 the Planning Commission reviewed the record of complaints regarding alleged violations of the Special Use Permit conditions of approval and directed staff to conduct an investigation regarding the alleged violations, including but not limited to ongoing odor complaints, working within the permitted hours of operation, and compliance with NDEP permits.

On February 6, 2020 the Board of Supervisors heard an appeal of the Planning Commission's decision of November 19, 2019, including an appeal of the conditions added by the Commission. Based on new information obtained by staff regarding the use of a regenerative thermal oxidizer, the matter was referred back to the Planning Commission for further consideration of the new information.

On February 26, 2020, after being referred back to the Planning Commission by the Board of Supervisors, the Commission reviewed the new information pertaining to its prior decision from November 19, 2019 and the amended conditions of approval. The Planning Commission voted 7-0 to modify the conditions of approval to:

- 1) Delete the condition that allowed the plant to operate outside the permitted hours of operation for up to 30 days in a calendar year, thus limiting the operations strictly to Monday through Saturday, 6 AM to 6 PM (condition #13);
- 2) Delete the condition requiring the use of a regenerative thermal oxidizer—which was determined to be inappropriate for the use—and replaced it with a condition to prohibit asphalt odors from being detected outside the property on which the asphalt plant is operating (condition #17);
- 3) Require a one-year review of the Special Use Permit in October 2020 (condition #18); and
- 4) Require periodic code enforcement monitoring of the operation for off-site odors, with the ability to review the Special Use Permit before October 2020 if code enforcement finds that violations are occurring (condition #19).

(See attached Planning Commission Notice of Decision dated February 26, 2020.)

On June 4, 2020 the Board of Supervisors heard the appeal of the Planning Commission's decisions of November 2019 and February 2020. The applicant informed the Board that submittal of a new application to NDEP was pending, and that the application would address NDEP concerns. The Board generally upheld the Planning Commission's decision and conditions, except that the Board:

1. Required the applicant to report back to the Board of Supervisors on August 20, 2020 regarding the revised NDEP application (condition #17); and

2. Abated any Special Use Permit review or show-cause actions against the operations prior to the Planning Commission's annual review in October in order to give the applicant time to address odor and other operations issues with the updated NDEP permit (condition #19).

(See attached Board of Supervisors Notice of Decision dated June 4, 2020, which are the most current conditions of approval applicable to the Special Use Permit.)

On August 20, 2020, the Board accepted the report from TWA, and no further action was taken. The representative of TWA noted that a new application had been submitted to NDEP in accordance with NDEP's request. City staff confirmed that the application was submitted by TWA to NDEP. However, on the date of the meeting, NDEP had not yet reviewed the application for compliance with NDEP requirements, only confirming that it was submitted and accepted.

On August 26, 2020, a stop-work order from NDEP to TWA became effective, based on alleged violations of NDEP regulations and permit requirements. See the attached notice of violation and stop-work orders from NDEP for details on the alleged violations that resulted in the order. The plant may not operate until NDEP requirements are satisfied and NDEP issues the applicable permits to resume operations. However, it should be noted that the permit that has been submitted by TWA to NDEP is effectively for the existing equipment that is used in the operations, and it is unlikely that the new permit will significantly reduce odor output from the facility. The NDEP's requirements related to the permit primarily focus on emissions and air quality standards, not odors. See the attached email from NDEP to the TWA operator, Robert Matthews, dated October 15, 2020, for the current status showing that the NDEP permit is pending the submittal of additional information by the applicant. To City staff's knowledge, the TWA asphalt plant has not been in operation since the stop-work order effective date of August 26, 2020.

LEGAL REQUIREMENTS:

CCMC 18.02.080 (Special Use Permits), CCMC 18.02.090 (Revocation or reexamination of variance or special use permit) CCMC 18.02.095 (Show cause procedure of variance or special use permit).

Carson City Municipal Code 18.02.090 states, in applicable part:

Any of the following reasons or occurrences are grounds for a hearing on revocation or reexamination of a variance or special use permit, pursuant to Title 18 (Show Cause Procedures):

1. *A failure or refusal of the applicant to comply with any of the terms or conditions of a variance or special use permit; . . .*
5. *Any act or failure to act by the applicant or its agents or employees directly related to the variance or special use permit which creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare.*

Carson City Municipal Code 18.02.095 outlines the process for show-cause procedures. Subparagraph 18.02.095(1)(b) states:

- (b) *After an investigation, if the commission determines that a ground for revocation or reexamination of a variance or special use permit exists, then the commission shall direct staff to issue and serve the applicant with an order to show cause why the variance or special use permit should not be revoked or reexamined.*

Should the Commission determine that grounds for revocation or reexamination of the Special Use Permit exists and direct staff to serve the applicant with an order, staff will send the appropriate order to the applicant and schedule a public hearing for a future Commission meeting, at which time the applicant will have an opportunity to address the alleged violations.

It is important to note that this item is not the appropriate time to debate whether the Special Use Permit should be revoked. That discussion should be reserved for the appropriate public hearing at which the applicant has the chance to address the Commission. The purpose of this item is for the Planning Commission to determine, based on the investigation evidence, if grounds exist to consider revocation of the permit after a public hearing with the applicant.

INVESTIGATION FINDINGS:

Attached is the report from Code Enforcement staff identifying all complaints and site investigations related to the TWA operation. Staff notes the following conditions related to TWA's Special Use Permit approval and complaints from residents in the vicinity of the site, and discusses the investigation findings related to the conditions:

12. *The applicant shall comply with, applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.*

Staff findings: TWA has been in violation of its NDEP permit in violation of Special Use Permit condition number 12.

Attached are the most recent NDEP notices to TWA, including a Notice of Violation dated August 14, 2020, a stop-work order dated August 14, 2020 (which had a stop-work order effective date of August 26, 2020), and a stop-work order dated August 26, 2020. The stop-work order was enforced based on non-compliance with NDEP permit requirements.

In addition to these recent NDEP violations, TWA was cited and fined by NDEP for violations between January 2017 and March 2018, as noted in the background discussion above.

The NDEP violations relate primarily to pollution and dust control, in addition to technical NDEP permit requirements. Despite numerous complaints regarding offensive odors and actual observations of odors by NDEP and City staff, no violations of NDEP odor requirements have been documented.

Hours of operation are discussed below under condition of approval number 13.

13. *Operating hours are to be from 6:00 a.m. to 6:00 p.m., Monday through Saturday, with gates open to customers only during these hours. Startup of equipment may occur between 5:30 AM to 6:00 AM. Operating on Sunday would be on emergency basis only; emergency basis means fire, flood or other major event where the City is in need of material for a crisis. ~~The applicant may work at night or on a Sunday, other than on an emergency basis, up to 30 times in a calendar year. When work is to occur at night or on a Sunday (other than on the emergency basis), the operator shall advise the Community Development Director in writing at least 72 hours prior. Nothing in this condition shall be construed as superseding any limitation on hours of operation put in place by NDEP.~~*

Staff findings: There is no evidence that TWA has been in violation of working outside the permitted hours of operation.

The amended condition with the stricken text deleted became effective on June 4, 2020, when the Board of Supervisors upheld the Planning Commission's condition on appeal by TWA. Prior to June 4, 2020, this condition allowed TWA to operate outside the permitted hours of operation up to 30 days in a calendar year. Code Enforcement documented operations outside the permitted hours on several occasions, and TWA informed the Community Development Department on several occasions of their intent to operate outside the permitted hours in compliance with this condition. While there were occasions when TWA likely operated outside the permitted hours without notifying the Community Development Department, it is not likely, and there is no evidence that TWA exceeded the permitted 30 days of operating outside the hours of operation.

It should be noted that there are numerous complaints from nearby residents that TWA was operating outside the hours of operation. However, upon investigation into some of these complaints, it was found that while the odors were observed outside the permitted hours of operation, it is most likely that on at least some occasions the odors were from materials left at the site and not from the operation of the machinery. Staff believes that the odors tend to "pool" in the pit overnight then slowly drift to the east during the late-night or early-morning hours under certain weather conditions.

Also note that there was a complaint regarding odors during the period in which TWA was not supposed be working, after the NDEP stop-work order. It was determined by Code Enforcement that those odors were from a repaving project on nearby Flint Drive and not from the operation of the TWA plant.

17. ~~The operator shall utilize Ecosorb in operations to suppress odors. The operation of the facility shall require that odors are not detectable beyond the property line.~~

Staff findings: TWA has been in violation of condition number 17 by not suppressing odors from the plant and allowing odors to be detectable beyond the property after June 4, 2020, the effective date of the amended condition.

Code Enforcement staff detected odors from the residential neighborhood to the east of the TWA plant on 6 of 17 site visits between February 18, 2020, and July 14, 2020. On 4 of these occasions Code Enforcement staff characterized the odors as "strong" or "very strong." Note that this is just a sampling of inspections on days on which the TWA plant was in operation. Several complaints of odors were received on days on which Code Enforcement staff did not do site inspections, but it can be assumed that odors were present on other occasions when inspections were not conducted.

The amended condition became effective on June 4, 2020, when the Board of Supervisors upheld the Planning Commission's condition on appeal by TWA. Prior to that date, there was no specific odor standard in the conditions of approval other than complying with NDEP requirements. As noted above, there have been no documented violations of NDEP standards for odors.

However, TWA operated between June 4 and August 26, 2020 under the amended condition. While Code Enforcement staff made no direct observations of odors during the two inspections conducted after June 4, 2020, several complaints of odors were received from residents during that time. Since the TWA plant continued to operate with the same equipment it had used prior to

June 4, 2020, it can be assumed that the complaints were valid and that odors continued to leave the property depending on weather conditions at any given time.

Nuisance findings: In addition to the above conditions of approval, the Planning Commission may consider whether the operation “creates or tends to create a public nuisance or is detrimental to the public health, safety and welfare” pursuant to CCMC 18.02.090(5). A nuisance is defined in CCMC 8.08 (Nuisances) as follows:

"Nuisance" or "nuisance activity" means that which is injurious to health, or injurious, indecent and offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or is against the interest of public morals, decency, safety, peace and order, including, but not limited to, an attractive nuisance, a nuisance per se, criminal activity, the presence of debris, litter, graffiti, garbage, rubble, abandoned, unregistered or junk vehicles or junk appliances, curfew violations, violations of building codes, housing codes, or any other codes regulating the health or safety of occupants of real property, excessive noise, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases, or any other activity, behavior or conduct defined by the Carson City Board of Supervisors to constitute a public nuisance. (Reference NRS Chapter 40 & 244)

Code Enforcement staff have documented offensive odors noticeable from the neighborhood to the east of the TWA asphalt plant operation, which is approximately one-quarter mile from the operation. In addition, numerous complaints of odors have been received from those residents over the past four years.

Summary of investigation findings:

1. TWA has been in violation of its NDEP permit, as evidenced by the NDEP violation notices identified above, in violation of Special Use Permit condition number 12. (CCMC 18.02.090[1])
2. While TWA has operated outside the permitted hours at times in the past, there is no evidence that they exceeded their permitted number of days on which they were permitted to do so pursuant to condition of approval number 13, and no evidence that they operated outside the permitted hours after June 4, 2020.
3. The TWA operation has violated the requirement in condition number 17, which requires odors to be controlled and prohibits odors from being detected beyond the property line. (CCMC 18.02.090[1])
4. The TWA operation has created or tended to create a public nuisance to the residents to the east of the property due to odors leaving the site on an ongoing basis during hours of operations and when the plant is not in operation. (CCMC 18.02.090[5])

Attachments:

- 1) Planning Commission Notice of Decision from February 26, 2020
- 2) Board of Supervisors Notice of Decisions from June 4, 2020 (with conditions currently in effect)
- 3) Code Enforcement report dated September 17, 2020
- 4) August 14, 2020, NDEP notice of violations

- 5) August 14, 2020, NDEP notice of stop-work order
- 6) August 26, 2020, NDEP stop-work order
- 7) October 15, 2020, NDEP email regarding TWA permit status

Carson City Planning Division

108 E. Proctor St.
Carson City, Nevada 89701
(775) 887-2180
Planning@carson.org
www.carson.org



PLANNING COMMISSION

February 26, 2020

NOTICE OF DECISION – SUP-10-115-2

Discussion and possible action regarding the one year review of the approval of a modification to a Special Use Permit on property zoned General Industrial, located at 8013 Highway 50 East, APN 008-611-35.

The Planning Commission conducted a public hearing on February 26, 2020, in conformance with City and State legal requirements and modified SUP-10-115-2 based on the required findings identified in Carson City Municipal Code 18.02.080, and subject to the following modified conditions of approval.

CONDITIONS OF APPROVAL:

Note the base language in these conditions are the conditions of approval approved on October 24, 2018 with SUP-10-115-2. Language proposed to be added appears in bold with an underline. Language proposed to be deleted appears bold with a strikethrough.

The following shall be completed prior to commencement of the use:

1. The applicant must sign and return the Notice of Decision / conditions of approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, the item will be rescheduled for the next Planning Commission meeting for further consideration.
2. The applicant shall meet all the conditions of approval and commence the use (obtain and maintain a valid building permit) for which this permit is granted within twelve months of the date of final approval. A single, one-year extension of time may be granted if requested in writing to the Planning Division thirty days prior to the one-year expiration date. Should this permit not be initiated within one year and no extension granted, the permit shall become null and void.

Conditions required to be incorporated into the proposed development plan.

3. All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by the conditions of approval herein.
4. All lighting must be directed downward. The design of the light standards must include cutoffs and shields, if necessary, to prevent any spillover of light or glare on to adjacent properties.
5. All improvements shall conform to City standards and requirements.

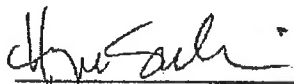
The following shall be submitted or included as part of a building permit application:

6. The applicant shall obtain a building permit from the Carson City Building and Safety Division for the proposed construction.
7. The applicant shall submit a copy of the Notice of Decision / conditions of approval, signed by the applicant and owner.
8. Details of the proposed light standards must be submitted with the building permit.
9. The applicant shall ensure that water or other appropriate wetting agents are utilized on the stock-piled material.

The following are associated with the use.

- 10. At all times when operations are not ongoing, the site must be secured by protection gate.
- 11. All federal, state and other local agency approvals shall be secured relative to the operation of this facility.
- 12. The applicant shall comply with, applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.
- 13. Operating hours are to be from 6:00 a.m. to 6:00 p.m., Monday through Saturday, with gates open to customers only during these hours. Startup of equipment may occur between 5:30 AM to 6:00 AM. Operating on Sunday would be on emergency basis only; emergency basis means fire, flood or other major event where the City is in need of material for a crisis. ~~The applicant may work at night or on a Sunday, other than on an emergency basis, up to 30 times in a calendar year. When work is to occur at night or on a Sunday (other than on the emergency basis), the operator shall advise the Community Development Director in writing at least 72 hours prior.~~ Nothing in this condition shall be construed as superseding any limitation on hours of operation put in place by NDEP.
- 14. A roof shall be installed and maintained over the truck loading chute area.
- 15. Water fogging systems at drop points when material drops to a different part of the equipment and is exposed to air shall be installed and maintained.
- 16. The vent condenser that has been installed must be maintained.
- 17. ~~The operator shall install and utilize a Regenerative Thermal Oxidizer Ecosorb in operations to suppress odors.~~ The operation of the facility shall require that odors are not detectable beyond the property line.
- 18. This Special Use Permit is subject to review in October 2020 one year. In reviewing the Special Use Permit, the Planning Commission shall conduct a public hearing, and the noticing for the public hearing shall be consistent with CCMC 18.02.045.
- 19. City Code Enforcement staff will monitor off-site odors a minimum of three times a month and maintain a detailed log. The log will be presented to the Planning Commission at its October 2020 meeting. Notwithstanding this, if City Code Enforcement staff observes odors from the plant in the residential areas of Moundhouse three times, the review of the Special Use Permit will be scheduled for the next available Planning Commission meeting for review of the Special Use Permit.

This decision was made on a vote of 7 ayes, 0 nays, 0 absent.



Hope Sullivan, AICP
Planning Manager

Emailed on: 3/3/2020

By: Beseck

★ CLERK ★
FILED
Time 4:52 pm

MAR 03 2020

By Lena E Beseck
Deputy
Carson City, Nevada

**PLEASE SIGN AND RETURN THIS NOTICE OF DECISION WITHIN
TEN DAYS OF RECEIPT**

This is to acknowledge that I have read and will comply with the Conditions of Approval as approved by the Carson City Planning Commission.

OWNER/APPLICANT SIGNATURE

DATE

PLEASE PRINT YOUR NAME HERE

RETURN VIA:

Email to: lreseck@carson.org

Fax to: (775) 887-2278

Mail to: Carson City Planning Division
108 E. Proctor St.
Carson City, NV 89701



Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180 – Hearing Impaired: 711
planning@carson.org
www.carson.org/planning

★ CLERK ★
FILED
Time 3:29 pm

JUN 09 2020

BOARD OF SUPERVISORS

June 4, 2020

By Lena E. Reseck
Deputy
Carson City, Nevada

NOTICE OF DECISION – SUP-10-115-2 Tahoe Western Asphalt

Discussion and possible action regarding the appeal of the Planning Commission’s decision to amend a special use permit for an asphalt plant and aggregate crushing facility known as Tahoe Western Asphalt, located at 8013 Highway 50 East, APN 008-611-35.

The specific items that constituted the appeal were as follows.

1. Remove the November 20, 2019 condition regarding a Regenerative Thermal Oxidizer;
2. Remove the requirement that odors are not detectable beyond the property line;
3. Remove the requirement for code enforcement monitoring;
4. Find that EcoSorb is effective in mitigating odor;
5. Remove the requirement for a lighting specification at the time of building permit application; and
6. Allow the facility to operate at night and on Sundays, up to 30 times per calendar year.

The Board of Supervisors conducted a public hearing on June 4, 2020, in conformance with City and State legal requirements. The Board considered each of the six above items individually, and voted as follows based on the required findings identified in Carson City Municipal Code 18.02.080, and subject to the following modified conditions of approval.

- Item 1: Denied the appeal and upheld the decision of the Planning Commission. (This condition was previously removed by the Planning Commission.)
- Item 2: Denied the appeal and modified the decision of the Planning Commission, with a modification to Condition of Approval 17 as shown below.
- Item 3: Denied the appeal and modified the decision of the Planning Commission, with a modification to Condition of Approval 19 as shown below.
- Item 4: Denied the appeal and upheld the decision of the Planning Commission.
- Item 5: Denied the appeal and upheld the decision of the Planning Commission.
- Item 6: Denied the appeal and upheld the decision of the Planning Commission.

Given the action on Item 6, effective immediately, operations outside the regular permitted days and hours are prohibited.

CONDITIONS OF APPROVAL:

Note the base language in these conditions are the conditions reflect the approval of the Planning Commission at its meeting on February 26, 2020. Language proposed by the Board to be added appears in bold with an underline. Language proposed by the Board to be deleted appears bold with a strikethrough.

The following shall be completed prior to commencement of the use:

1. The applicant must sign and return the Notice of Decision / conditions of approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, the item will be rescheduled for the next Planning Commission meeting for further consideration.
2. The applicant shall meet all the conditions of approval and commence the use (obtain and maintain a valid building permit) for which this permit is granted within twelve months of the date of final approval. A single, one-year extension of time may be granted if requested in writing to the Planning Division thirty days prior to the one-year expiration date. Should this permit not be initiated within one year and no extension granted, the permit shall become null and void.

Conditions required to be incorporated into the proposed development plan.

3. All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by the conditions of approval herein.
4. All lighting must be directed downward. The design of the light standards must include cutoffs and shields, if necessary, to prevent any spillover of light or glare on to adjacent properties.
5. All improvements shall conform to City standards and requirements.

The following shall be submitted or included as part of a building permit application:

6. The applicant shall obtain a building permit from the Carson City Building and Safety Division for the proposed construction.
7. The applicant shall submit a copy of the Notice of Decision / conditions of approval, signed by the applicant and owner.
8. Details of the proposed light standards must be submitted with the building permit.
9. The applicant shall ensure that water or other appropriate wetting agents are utilized on the stock-piled material.

The following are associated with the use.

10. At all times when operations are not ongoing, the site must be secured by protection gate.
11. All federal, state and other local agency approvals shall be secured relative to the operation of this facility.
12. The applicant shall comply with, applicable requirements of NDEP Bureau of Air Pollution Control Air Quality Operating Permit, including days and hours of operation. The applicant shall also comply with applicable requirements for noise, odors, erosion, air pollution and dust control.
13. Operating hours are to be from 6:00 a.m. to 6:00 p.m., Monday through Saturday, with gates open to customers only during these hours. Startup of equipment may occur between 5:30 AM to 6:00 AM. Operating on Sunday would be on emergency basis only; emergency basis means fire, flood or other major event where the City is in need of material for a crisis. Nothing in this condition shall be construed as superseding any limitation on hours of operation put in place by NDEP.
14. A roof shall be installed and maintained over the truck loading chute area.
15. Water fogging systems at drop points when material drops to a different part of the equipment and is exposed to air shall be installed and maintained.

- 16. The vent condenser that has been installed must be maintained.
- 17. The operation of the facility shall require that odors are not detectable beyond the property line. **Tahoe Western Asphalt shall report their Nevada Department of Environmental Protection permit information at the August 20, 2020 Board of Supervisors meeting.**
- 18. This Special Use Permit is subject to review in October 2020. In reviewing the Special Use Permit, the Planning Commission shall conduct a public hearing, and the noticing for the public hearing shall be consistent with CCMC 18.02.045.
- 19. City Code Enforcement staff will monitor off-site odors a minimum of three times a month and maintain a detailed log. The log will be presented to the Planning Commission at its October 2020 meeting. ~~**Notwithstanding this, if City Code Enforcement staff observes odors from the plant in the residential areas of Moundhouse three times, the review of the Special Use Permit will be scheduled for the next available Planning Commission meeting for review of the Special Use Permit.**~~

This decision on each of the six items was 4 ayes, 0 nays, 1 absent.



 Hope Sullivan, AICP
 Planning Manager

Emailed on: 4/19/20

By: CE

PLEASE SIGN AND RETURN THIS NOTICE OF DECISION WITHIN TEN DAYS OF RECEIPT

This is to acknowledge that I have read and will comply with the Conditions of Approval as approved by the Carson City Board of Supervisors.

OWNER/APPLICANT SIGNATURE

DATE

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Carson City Code Enforcement

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codeenforcement@carson.org
www.carson.org/planning

MEMORANDUM

TO: Lee Plemel, Community Development Director

FROM: William Kohbarger, Code Enforcement

DATE: September 17, 2020

SUBJECT: Tahoe Western Asphalt LLC
 8025 Hwy 50 E

The following is a Code Enforcement summary of all the complaints, inspections and interactions involving Case #101162, Tahoe Western Asphalt LLC.

Number of Complaints: = 260

Odor complaints = 232

Hours of operation = 28

Notice of Violations: = 03

April 10, 2018: NOV #2036 (18.02.030 & 18.02.090)

August 21, 2018: NOV #1900 (18.02.030 & 18.02.090)

August 24, 2018: NOV #1902 (18.02.030 & 18.02.090)

Visits to Mound House/TWA Plant:

September 27, 2017: 4:43 a.m., strong odor detected (Mound House/Carson Highlands subdivision)

February 20, 2018: 2:31 p.m., plant not operational (TWA Plant)

March 13, 2018: 9:30 a.m. to 10:00 a.m., no odor detected (Mound House/Carson Highlands subdivision)

July 25, 2018: 4:15 p.m., strong odor detected (west of TWA Plant)

August 14, 2018: 6:00 a.m. to 7:00 a.m., plant not operational (TWA Plant)

August 17, 2018: 8:00 a.m., no odor detected (hill above TWA Plant)

August 21, 2018: 6:00 a.m. to 6:35 a.m., plant was operational before SUP prescribed hours – no odor detected (hill above TWA Plant)

September 04, 2018: 10:30 a.m., no odor detected (TWA Plant)

November 05, 2018: 8:25 a.m., faint odor detected at both sites (Mound House/Carson Highlands subdivision & TWA Plant)

December 18, 2018: 9:10 a.m., not operational (TWA Plant)

February 01, 2019: 8:40 a.m., not operational (TWA Plant)

April 26, 2019: 7:30 a.m. to 8:10 a.m., no odor detected (Mound House/Carson Highlands subdivision & hill above TWA Plant)

August 01, 2019: 9:30 a.m., strong odor detected (Mound House/Carson Highlands subdivision)

August 30, 2019: 9:40 a.m., strong smell detected (Mound House/Carson Highlands subdivision)

September 18, 2019: 8:45 a.m. to 9:10 a.m., faint odor detected (Mound House/Carson Highlands subdivision)

September 20, 2019: 7:15 a.m. to 8:00 a.m., faint odor detected (Mound House/Carson Highlands subdivision)

October 02, 2019: 9:10 a.m. to 9:40 a.m., faint odor detected (Mound House/Carson Highlands subdivision)

November 25, 2019: Various times, no odor detected (Mound House/Carson Highlands subdivision)

November 26, 2019: Various times, no odor detected (Mound House/Carson Highlands subdivision)

February 18, 2020: 8:25 a.m., no odor detected (TWA plant – just starting up their operations)

February 20, 2020: 7:45 a.m. to 8:22 a.m., no odor detected (TWA plant; Mound House/Carson highlands subdivision and hill above TWA plant)

February 27, 2020: 8:58 a.m. to 10:15 a.m., strong odor detected (Mound House/Carson Highlands subdivision and hill overlooking TWA plant)

March 23, 2020: 1:48 p.m., no odor detected (Mound House/Carson Highlands subdivision and hill overlooking TWA plant)

April 03, 2020: 3:30 p.m., faint odor detected (Mound House/Carson Highlands subdivision)

April 08, 2020: 2:25 p.m., no odor detected (Mound House/Carson Highlands subdivision) and the hill overlooking the TWA plant.

April 10, 2020: 9:17 a.m. to 9:47 a.m., no odor detected (Mound House/Carson Highlands subdivision) and hill overlooking the TWA plant which was operational.

April 20, 2020: 3:26 p.m. to 3:36 p.m., detected a strong odor of asphalt Mound House (Carson Highlands subdivision – Highlands & Miriam. Odor continued up Miriam to Traci. After 10 minutes of driving around the subdivision the odor dissipated. Note: TWA plant was operational as a dump truck full of asphalt was exiting upon CE arriving at the plant.

April 28, 2020 09:52 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision) further driving around the community. No odor was detected. CE then visited the hill overlooking the TWA plant which was operating.

May 12, 2020 10:13 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision) after receiving a complaint from a Mound House citizen about the smell from TWA. Note: the complaint was received at 9:57 hrs., and CE Officer Kohbarger arrived in Mound House at 10:13 hrs. CE Officer Kohbarger drove around the subdivision until 10:36 hrs., detecting a very faint smell

of asphalt. The conditions were overcast with a low ceiling and the wind blowing from the west.

May 20, 2020 14:09 hrs. to 14:59 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision). CE Officer Kohbarger drove around the entire subdivision stopping in various locations. No asphalt odors were detected. CE Officer Kohbarger then proceeded to the hill overlooking the TWA plant. At 14:45 hrs., CE Officer Kohbarger observed a dump truck receive a load of asphalt. The plant is operational. CE Officer Kohbarger then proceeded back to the subdivision and drove around the subdivision again detecting no asphalt odors.

May 27, 2020 09:30 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Mound House (Carson Highlands subdivision) after received a complaint about smell. CE Officers drove around the entire subdivision detecting no odors for the TWA Plant. CE then proceeded to the hill overlooking the TWA plant. The plant was operational.

May 28, 2020 08:20 hrs. – 08:56 hrs., CE Officer Kohbarger conducted a site visit to the Mound House (Carson Highlands subdivision) after receiving two complaints. At 08:20 hrs., CE Officer Kohbarger detected a faint odor of asphalt at 241 Miriam and again at 08:42 hrs., at 225 Miriam. At 08:49 hrs., CE Officer Kohbarger detected a strong odor of asphalt at 249 Miriam and again at 08:53 hrs., at 414 Traci. At 09:03 hrs., CE Officer Kohbarger visited the TWA plant where he was greeted by Mr. Matthews. After several minutes of talking, CE Officer Kohbarger contacted via telephone Ms. Sullivan placing her on a speaker call with Mr. Matthews listening to the call. During this call we discussed Mr. Matthews (TWA plant) operating hours. NOTE: CE Officer Kohbarger recorded three videos of the TWA plant operating showing smoke coming from the TWA smokestack.

June 02, 2020 09:30 hrs. – 09:45 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Mound House (Carson Highlands subdivision) after receiving a complaint. CE Officers drove around the subdivision for 15 minutes detecting no odors from the TWA plant.

June 03, 2020 09:05 hrs. – 09:46 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Carson Highlands subdivision. CE Officers detected numerous strong asphalt odors at 245 and 243 Miriam Way over a 41-minute period. Photos and video taken. Clouds of smoke kept coming over the hill and dropping down into the subdivision. Strong odors persist.

June 12, 2020 09:00 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision). During the visit, CE met with Mr. Homestead, LCCE and a Mound House resident. No odors detected. CE drove around entire subdivision.

July 14, 2020 08:25 hrs. – 08:57 hrs., CE Officer Kohbarger conducted a site visit to the Mound House (Carson Highlands subdivision) area. CE Officer Kohbarger drove around the community for 20 minutes detecting no odors. At 08:46 hrs., CE Officer Kohbarger drove to the hill overlooking the TWA plant. CE Officer Kohbarger remained on the hill until 08:57 hrs. during which time he observed little activity. No trucks entered the plant to load with asphalt, the loader was not loading material, and no smoke was coming from the smokestack.

September 17, 2020 07:58 a.m., CE Officer Kohbarger conducted a site visit and observed no activity.

Inspection Log:

Sept 26, 2017 05:40 hrs., received a phone message asking for help with the odor being emitted from the TWA plant. At 11:54 hrs., CE Officer McCoy received a call asking for a complaint form regarding the same issue.

Sept 27, 2017 04:43 hrs., CE Officer McCoy was traveling into work and smelled odors near Alex Upholstery, near the entrance into the TWA property, Bunny Ranch Blvd at HWY 50, 261 Miriam, 251 Miriam, and Jenni at Carson Dr, 249 Miriam. At 0602 hrs., CE Officer McCoy conducted a site visit to the TWA property and spoke to Teal and he stated they turn on the machines around 06:30 hrs., and start loading trucks around 07:00 hrs.

Feb. 20, 2018 @ 14:31 hrs., CE Officers Kohbarger and Johnston performed a follow up visit and did not observe any operations taking place.

March 13, 2018 @ 9:30-10:00 hrs., CE Officer Kohbarger and Johnston conducted a site visit to the area in question pursuant to receiving a call from two citizens living in the Mound House area who advised the smell was back. CE Officers Kohbarger and Johnston did not smell any odors. The TWA plant was operational.

March 23, 2018 @ 03:00 hrs., CE Officer Kohbarger received a voice message that the plant was in operation.

April 09, 2018 @ 06:01 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House advising that the plant is operational and burning/mixing their material. Photo taken and sent via email. At 9:01 hrs., another citizen from Mound House contacted CE Officer Kohbarger via telephone and advised him that the Asphalt plant was operating at 6:00 a.m. and that it was operating yesterday, Sunday.

April 10, 2018 @ 16:00 hrs., CE Officers Kohbarger and Johnston conducted a site visit and issued a Notice of Violation (NOV) #2036: Violations - 18.02.030 Enforcement & 18.02.090 Operating outside the set-times and days as established within the special use permit. The NOV was taped to the door of the Control Room due to no one present at the time of CE's arrival.

April 11, 2018 @ 08:20 hrs., CE Officer Kohbarger was contacted via telephone by Mr. Robert Matthews, co-owner from the TWA plant asking why they received Notice of Violation #2036. CE Officer Kohbarger explained to Mr. Matthews it was because the Plant was operating at 3:00 a.m. and 6:00 a.m. on several mornings outside the directives as set forth in the Special Use Permit. Mr. Matthews stated, "yes we did and that is my fault and it won't happen again." "We will not start operation until 7:00 a.m., thank you."

April 20, 2018 @ 11:28 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House complaining about the smell and advising that the plant was operational. At 11:41 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

April 23, 2018 @ 05:10 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House advising, "I stepped outside, before leaving for work, and could smell asphalt odors at 4:50 a.m."

April 24, 2018 @ 23:53 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House advising, "This time odors woke me out of a dead sleep." "Approximately 11:51 p.m., at this time I had my bathroom window open for fresh air only to have sleep disturbed!"

April 29, 2018 @ 13:30 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 03, 2018 @ 08:45 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 17, 2018 @ 16:46 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 18, 2018 @ 08:56 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 10:08 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 23, 2018 @ 18:48 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 24, 2018 @ 08:50 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 29, 2018 @ 09:49 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 04, 2018 @ 07:45 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 07, 2018 @ 08:54 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 11, 2018 @ 17:57 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant with a photo attached.

June 13, 2018 @ 08:00 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 23, 2018 @ 09:41 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 26, 2018 @ 15:50 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating at 06:15 hrs. At 17:37 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the TWA plant operating at 06:17 hrs., with a picture attached.

June 27, 2018 @ 09:31 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received two (02) complaints that TWA was operating at 06:15 hrs.

June 28, 2018 @ 07:34 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to TWA that they were operating at 05:30 hrs. At 08:17 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating outside their special use requirements.

June 29, 2018 @ 07:34 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating at 06:50 hrs.

July 11, 2018 @ 08:13 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to TWA that they smell emission odors at 12:40 p.m. July 02, 2018; 7:05 a.m. July 03, 2018; 11:45 p.m. July 10, 2018; and 8:45 a.m. July 11, 2018. At 09:24 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating outside of the days/hours in the Special use Permit.

July 16, 2018 @ 09:44 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:57 hrs., received another email from a citizen of Mound House that another individual from Mound House also smelled the odor.

July 17, 2018 @ 09:36 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 19, 2018 @ 08:17 hrs., CE Officer Kohbarger received a phone call from a citizen of Mound House advising the TWA plant was operating before 06:00 hrs. At 08:14 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating at 06:20 hrs., and again 01:00 hrs.

July 20, 2018 @ 07:15 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 24, 2018 @ 10:15 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 25, 2018 @ 16:15 p.m. CE Officers Kohbarger and Johnston while investigating another case close to the TWA plant smelled a strong odor coming from the Plant. Upon driving onto the TWA Plant property CE Officers observed no one at the Plant and observed that the Plant was not operational.

July 26, 2018 @ 08:03 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 10:09 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 27, 2018 @ 08:50 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 01, 2018 @ 08:36 hrs., CE Officer Kohbarger received an email from CE Officer Johnston advising that Mr. Myers, NDEP contact him and advised that the TWA Plant was operating at 6:00 a.m.

August 09, 2018 @ 09:13 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating at 22:30 hrs., on August 08, 2018.

August 10, 2018 @ 08:00 hr., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 11:00 hrs., CE Officer Kohbarger

received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 12, 2018 @ 21:16 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant and that the plant was operating at 21:08 hrs.

August 13, 2018 @ 10:29 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 14, 2018 @ 06:00 to 07:00 hrs., CE Officer Kohbarger observed the TWA plant. Three individuals walking around getting ready for the day starting at 06:00 hrs., but the plant was not in operation. No smoke, no smell, no noise.

August 15, 2018 @ 08:34 hrs., CE Officer Kohbarger received a telephone call from Mr. Osterhout, NDEP advising that he was at the TWA plant this morning between 06:45 and 07:45 hrs., and the plant was not in operation before 07:00 hrs. The plant started operating at approximately 07:15 hrs.

August 17, 2018 @ 08:00 hrs., CE Officers Kohbarger and Johnston met with Mr. Osterhout on the hill above the TWA Plant. Mr. Osterhout explained how the plant worked and showed CE the previous violations. In addition, Mr. Osterhout gave CE an email from Mr. Matthews, dated Monday, June 25, 2018 with the Plant Procedures included as an attachment. Mr. Osterhout also provided the attachment, which was a flyer "Typical Plant Protocol". This flyer outlined that TWA employees are to start working at the Plant at 5:30 a.m. NOTE: The TWA SUP states their work hours are set from 7:00 a.m. to 6:00 p.m. Monday - Saturday.

August 20, 2018 @ 06:36 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to TWA operating early. At 11:01 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to TWA that they received a complaint that TWA was operating at 06:32 hrs., on August 20, 2018.

August 21, 2018 @ 06:00 CE Officer Kohbarger conducted a site visit to TWA (Parked on the hill above the Plant) and observed that the Plant was in full operations. CE Officer Kohbarger proceeded to take two (02) videos from the TWA plant in operations from 06:03 hrs., to 06:35 hrs. In addition, the second video shows the owner, Mr. Robert Matthews speaking to CE Officer Kohbarger and admitting that TWA was operating early, 6:00 a.m. NOTE: CE Officer Kohbarger upon arriving back at the Office went to Carson City Information Technology (IT) (City Hall) and had IT transfer the videos from CE Officer Kohbarger's cell phone to CE Officer Kohbarger's "H" drive on the computer system. The videos remain the same and have not been altered in any way shape or form.

August 22, 2018 @ 07:29 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 23, 2018 @ 08:12 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:09 hrs., CE Officer received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 24, 2018 @ 06:17 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

Sept 04, 2018 @ 10:30 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the TWA plant and spoke with Mr. Matthews. CE prepared and presented Mr. Matthews with two (02) Notice of Violations #1902 and #1900 for operating outside the hours set forth by his SUP

for 08/21/18 and 08/24/18, in which Mr. Matthews signed for both. Mr. Matthews further advised he made a choice to operate before hours that week to fill an order for the South Lake Tahoe people.

September 07, 2018 @ 08:14 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 10, 2018 @ 08:29 hrs., CE Officer Kohbarger received an email received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 11, 2018 @ 12:18 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House pertaining to the smell being put out by TWA.

September 12, 2018 @ 09:29 hrs., CE Officer Kohbarger received an email received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 18, 2018 @ 08:40 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 19, 2018 @ 07:57 hrs., CE Officer Kohbarger received a voice message on the Office telephone from a citizen of Mound House pertaining to the smell being created by TWA. At 08:48 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 21, 2018 @ 03:33 hrs., CE Officer Kohbarger received an email received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 07:50 hrs., CE Officer received a voice message from a citizen of Mound House pertaining to the smell being created by TWA. That citizen advised that today's smell was the worst odor in two years. At 08:44 hrs., CE Officer Kohbarger received an email from Ms. Krupp, NDEP advising that they received a complaint from a citizen of Mound House about the TWA plant operating at 12:35 a.m.

September 25, 2018 @ 09:09 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant with a photo attached.

September 26, 2018 @ 08:35 hrs., CE Officer Kohbarger was contact via telephone by a citizen of Mound House pertaining to the smell being created by TWA.

October 05, 2018 @ 09:31 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 08, 2018 @ 11:04 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 11:11 hrs., CE Officer Kohbarger received an email from a citizen of Mound House with photo attached.

October 09, 2018 @ 08:54 hrs., CE Officer Kohbarger received an email from Ms. McKnight pertaining to TWA smells/odor.

October 17, 2018 @ 09:17 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 23, 2018 @ 09:03 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:15 hrs., CE Officer Kohbarger received another email from A citizen of Mound House with photo attached.

October 24, 2018 @ 10:20 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 24, 2018 @ 18:00 hrs., SUP-10-115-2 Asphalt Plant 8013 Hwy 50 E was discussed by the Planning Commission. The SUP was modified pursuant to staff recommendations.

October 25, 2018 @ 08:33 hrs., CE Officer Kohbarger received an email from Ms. Krupp, NDEP pertaining to a complaint filed with NDEP pertaining to TWA smell.

October 26, 2018 @ 08:26 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:28 hrs., CE Officer Kohbarger received another email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 12:35 hrs., CE Officer Kohbarger received another email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 27, 2018 @ 11:50 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 14:31 hrs., CE Officer Kohbarger received another email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 29, 2018 @ 09:44 hrs., CE Officer Kohbarger received an email from Ms. Krupp pertaining to complaints filed with NDEP pertaining to TWA smell. At 11:02 hrs., CE Officer Kohbarger received two emails from Mr. Booth, CCH&HS pertaining to complaints filed with CCH&HS about TWA odors. At 16:48 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP pertaining to complaints NDEP received pertaining to TWA smells.

November 02, 2018 @ 08:27 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 05, 2018 @ 07:47 hrs., CE Officer Kohbarger received an email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant with attached photo showing smoke/stream coming from stack. At 08:25 hrs., CE Officers Kohbarger and Johnston conducted a sit visit to Mound House and TWA Plant site. A very faint smell could be detected in both locations. At 09:37 hrs., CE Officer Kohbarger received another email from received an email from a citizen of Mound House pertaining to the odors from the TWA plant

November 06, 2018 @ 10:13 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 09, 2019 @ 08:24 hrs., CE Officer Kohbarger received an email from Ms. McKnight, NDEP advising that they received a complaint that TWA was operating at 1:30 a.m.

November 15, 2018 @ 09:05 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

December 14, 2018 @ 07:55 hrs., CE Officer Kohbarger received a fax from a citizen of Mound House complaining about the smell and advising that the plant was operating at 4:30 a.m. on 12/13/18. At 08:11 hrs., CE Officer Kohbarger received an email from Ms. McKnight advising that she received a telephone call about TWA operating early.

December 18, 2018 @ 09:10 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the location and observed that the plant was not in operation.

December 19, 2018 @ 09:13 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

January 04, 2019 @ 08:39 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

January 15, 2019 @ 06:38 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

February 01, 2019 @ 07:01 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 08:40 hrs., CE Officer Kohbarger conducted a site visit to the TWA plant and observed no one working. There were no individuals at the plant site.

February 04, 2019 @ 08:51 hrs., CE Officer Kohbarger was contacted via telephone by Mr. Matthews who advised that the plant was not operational on Friday. He was in Florida.

March 14, 2019 @ 12:28 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

March 19, 2019 @ 08:59 hrs., CE Officer Kohbarger received an email a citizen of Mound House pertaining to the odors from the TWA plant. At 09:51 hrs., CE Officer Kohbarger received another email from a citizen of Mound House complaining about the smell from TWA. At 10:01 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House advising that the smell being created by TWA was awful.

March 25, 2019 @ 13:41 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

March 26, 2019 @ 08:44 hrs., CE Officer Kohbarger was contacted via telephone by a citizen of Mound House who was complaining about the TWA smell. At 08:45 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant. At 11:08 hrs., CE Officer Kohbarger received an email from Mr. Osterhout advising they had NDEP staff in mound House this morning and they detected odors briefly. At 12:15 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 01, 2019 @ 10:18 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 10:43 hrs., CE Officer Kohbarger received another email from a citizen of Mound House complaining about the smell from TWA.

April 08, 2019 @ 13:28 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 14:31 hrs., CE Officer Kohbarger received a voice message from another citizen of Mound House complaining about the smell from the TWA plant.

April 12, 2019 @ 10:07 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 13, 2019 @ 09:49 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 22, 2019 @ 06:33 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 23, 2019 @ 09:55 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 24, 2019 @ 12:16 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 25, 2019 @ 08:32 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 08:35 hrs., CE Officer Kohbarger received a voice mail from another citizen of Mound House complaining about the smell from the TWA plant.

April 26, 2019 @ 04:51 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 07:30 hrs., CE Officer Kohbarger conducted a site visit to the TWA Plant area and did not smell any odors. CE Officer Kohbarger then drove around Mound House and did not smell any odors. CE Officer Kohbarger spoke with a citizen of Mound House and that individual advised he has been out walking his dog and smelled no fumes. CE Officer Kohbarger was in the area from 07:30 to 08:10 hrs.

April 28, 2019 @ 07:45 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

April 30, 2019 @ 08:40 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 01, 2019 @ 07:56 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 10:39 hrs., CE Officer Kohbarger received email from another citizen of Mound House pertaining to the odors from the TWA plant.

May 07, 2019 @ 07:59 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:58 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 14, 2019 @ 07:26 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 20, 2019 @ 10:14 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

May 21, 2019 @ 11:43 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant with an attached photo.

May 31, 2019 @ 09:05 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant with an attached photo.

June 03, 2019 @ 15:11 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 06, 2019 @ 08:43 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 10, 2019 @ 09:26 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 17, 2019 @ 10:06 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 19, 2019 @ 10:18 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

June 25, 2019 @ 07:12 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 03, 2019 @ 10:14 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 15, 2019 @ 07:31 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 08:39 CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odor from the TWA plant.

July 22, 2019 @ 07:06 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 12:53 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

July 31, 2019 @ 14:29 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

August 1, 2019 Code Enforcement Officer Johnston arrived to work and received 2 voice mail messages regarding a bad smell being emitted from the asphalt plant. I also received an email from a citizen of Mound House with a photo of the plant operating.

At approximately 0930hrs., Officer Johnston performed a site visit to the Mound House Mobile Home Park area where all the complainants live. He arrived within the area and stopped at the intersection of Carson and Traci streets. He easily identified an odor that is the smell of asphalt within the area. Officer Johnston continued to drive in the neighborhood, and he was able to smell the same asphalt odor in the upper Miriam St. area. Officer Johnston performed another drive through the neighborhood and smelled the same odor again within the same locations at the intersection of Carson and Traci, Traci and Miriam and the entire Miriam St. After stopping and writing down the locations of the odor Officer Johnston went to observe the asphalt plant. He observed them operating from the water tank and took photos and video of the plant loading an A&K Earthmovers Truck with asphalt. Officer Johnston was sitting at a higher elevation than the plant and did not smell the asphalt odor. He did observe the wind was traveling East in the direction of the mobile home park being affected. Officer Johnston called and notified NDEP Supervisor Travis Osterhout.

Officer Johnston also notified Carson City Planning Manager Hope Sullivan who called Tahoe Western Asphalt Owner Mr. Mathews. Mr. Mathews stated he ran low of propane supply which makes his asphalt plant burn differently than from a normal supply. Mr. Mathews stated that is the reason why his operation has changed today. Ms. Sullivan also asked him if he has made any changes to his operation and he said no, and he has been extremely busy with business. Ms. Sullivan asked him if he is still using and supplying the odor eliminating additive and he said yes. Mr. Mathews informed us that he has repaired the propane shortage and is back to normal operating procedures.

August 30, 2019 @ 08:18 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At approximately 09:00hrs., CE Officer Johnston received a fax addressed to Hope Sullivan regarding a noxious smell and pollution complaint from a citizen of Mound House. The fax stated: Tahoe Western Asphalt is polluting the air again with that terrible smell. Thanks! a citizen of Mound House.

CE Officer Johnston called a citizen of Mound House at approximately 09:20 hrs. and asked if he would be willing to meet at his house in about 25 minutes. That citizen agreed. As CE

Officer Johnston was driving towards Mound House, he observed that Tahoe Western Asphalt was currently operating and emitting large plumes of white smoke or vapor from the plant. The smoke was coming from both the large tall cylinder tank and the asphalt plant loading tower. There was also quite a bit of dust coming from the N.E. aggregate mine within the property. As Officer Johnston drove East on HWY 50 passing the entrance to the asphalt plant and continued towards Mound House, he also smelled what he recognized as burning asphalt. Officer Johnston entered the citizens' mobile home housing complex and the smell became stronger. Officer Johnston drove through the housing complex to the citizen's residence and observed the smell at the way to their house. The smell and odor were noxious and unpleasant. Officer Johnston met with a citizen of Mound House who stated his concerns and described how he has had to tolerate the unbearable smell for over a year. He engaged in a long conversation with that citizen and his wife. Officer Johnston explained to the both how asphalt is made, transported and how it is used to build roads. He also explained to them that the Carson City Code Enforcement Department has received all their complaints and documented everything regarding Tahoe Western Asphalt and their operations and violations. Officer Johnston told the citizens that our Departments have done everything we possibly can to ensure the company is in compliance with the CCMC's and have corrected their violations. Officer Johnston advised them that they do have the right to file a criminal complaint with the Carson City District Attorney's Office and they may do so with the NRS nuisance violation. Officer Johnston explained that he would not know which jurisdiction would be best and they may want to file a criminal complaint with the Lyon County DA's Office as well.

I instructed them that we will continue to take their complaints and document them for City public record and if we are able to take Code Enforcement action we would continue to do so.

September 04, 2019 @ 09:55 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 10, 2019 @ 09:28 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 17, 2019 @ 09:54 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 18, 2019 @ 08:25 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 08:45 hrs., to 09:10 hrs., CE Officers Kohbarger and Johnston conducted a site visit to Mound House. While in Mound House CE only smelled the TWA plant once and it was a very faint smell. At 10:03 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 19, 2019 @ 07:39 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 20, 2019 @ 07:15 to 08:00 hrs., CE Officer Kohbarger conducted a site to Mound House and only once in that forty-five minute period did CE smell any odors and it was very faint. The faint smell was noticed at Traci Lane @ Miriam. The plant was operational and could be heard in Mound House. At 11:53 hrs., CE Officer Kohbarger received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 25, 2019 @ 07:55 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 09:42 hrs., CE Officer Kohbarger

received another email from a citizen of Mound House pertaining to the odors from the TWA plant.

September 26, 2019 @ 08:34 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. In addition, CE Officer Kohbarger was contacted via telephone by another citizen of Mound House who was also complaining of the smell.

September 27, 2019 @ 09:18, 10:03, 12:18, and 14:49 hrs., CE Officer Kohbarger received four emails from citizens of Mound House pertaining to the odors from the TWA plant.

September 28, 2019 @ 08:46 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 02, 2019 @ 09:21 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 9:10 hrs., CE Officer Kohbarger conducted a site visit to Mound House. CE Officer Kohbarger parked in front of 231 Miriam - No smell detected. At 09:16 hrs., CE Officer Kohbarger parked at the corner of Miriam @ Traci - No smell detected. At 09:25 hrs., CE Officer Kohbarger parked at the intersection of Traci @ Carson - Smell detected, lasted for about two minutes. At 09:40 hrs., CE Officer Kohbarger proceeded to the TWA Plant which was operational.

October 07, 2019 @ 07:54 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 08, 2019 @ 11:29 and 12:47 hrs., CE Officer Kohbarger received two emails from a citizen of Mound House pertaining to the odors from the TWA plant.

October 10, 2019 @ 09:24 hrs., CE Officer Kohbarger hand delivered a letter to Mr. Matthews at Ms. Sullivan's request.

October 12, 2019 @ 10:27 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 16, 2019 @ 09:22 and 10:24 hrs., CE Officer Kohbarger received two emails from a citizen of Mound House pertaining to the odors from the TWA plant.

October 18, 2019 @ 08:33 and 14:13 hrs., CE Officer Kohbarger received two emails from a citizen of Mound House pertaining to the odors from the TWA plant.

October 21, 2019 @ 09:14 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 22, 2019 @ 10:24 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

October 23, 2019 @ 09:22 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 01, 2019 @ 09:43 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 02, 2019 @ 09:10 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 04, 2019 @ 09:56 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 05, 2019 @ 08:51 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 07, 2019 @ 07:53 hrs., CE Officer Kohbarger received a voice mail from a citizen of Mound House complaining about the odors from the TWA plant. At 08:45 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant. At 08:52 hrs., CE Officer Kohbarger received a telephone call from another citizen of Mound House complaining about the odors from the TWA plant.

November 08, 2019 @ 09:21 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 11, 2019 @ 09:14 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 13, 2019 @ 08:24 hrs., CE Officer Kohbarger was contacted via telephone by a citizen of Mound House complaining about the smell from the TWA plant. At 09:27 and 10:24 hrs., CE Officer Kohbarger received emails from a citizen of Mound House pertaining to the odors from the TWA plant.

November 15, 2019 @ 13:09 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 16, 2019 @ 09:31 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 17, 2019 @ 10:43 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 19, 2019 @ 09:55 hrs., CE Officer Kohbarger was contacted via telephone by a citizen of Mound House complaining about the odors from the TWA plant.

November 21, 2019 @ 08:15 hrs., CE Officer Kohbarger hand delivered the Notice of Decision of SUP 11-115-02 at Ms. Sullivan's request to Mr. Matthews, at the TWA Plant. At 11:23 hrs., CE Officer Kohbarger received an email from a citizen of Mound House pertaining to the odors from the TWA plant.

November 22, 2019 @ 09:52 hrs., CE Officer Kohbarger was contacted via telephone by a citizen of Mound House complaining about the smell and smoke from the TWA plant. At 13:36 and 14:58 hrs., CE Officer Kohbarger received emails from another citizen of Mound House pertaining to the odors from the TWA plant.

November 23, 2019 @ 08:41 hrs., CE Officer Kohbarger received a voice message from a citizen of Mound House complaining about the smell and operations from the TWA plant. At 11:23 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

November 24, 2019 @ 09:30, 09:46, 10:32, and 10:38 hrs., CE Officer Kohbarger received four emails from a citizen of Mound House complaining about the smell from the TWA plant. At 10:20 hrs., CE Officer Kohbarger received a voice message from another citizen of Mound House complaining about the smell from the TWA plant.

November 25, 2019 @ 09:59 & 11:28 hrs., CE Officer Kohbarger received two emails from a citizen of Mound House complaining about the smell from the TWA plant with a picture and video attached.

November 25 & 26, 2019 @ various times, CE Officers Kohbarger and Johnston conducted site visits to Mound House, NV visiting with five different citizens, further collecting witness statements from them pursuant as to the TWA Plant operations on Sunday, November 24, 2019.

December 18, 2019 @ 07:57 hrs., CE Officer Kohbarger received an email from Mr. Matthews requesting to: “Is it possible to do some nasal ranger testing with at least one person from each entity on site! Would be huge to get everyone to agree what an odor is! Thx”.

December 19, 2019 @ 08:00 hrs., CE Officer Kohbarger received a voice message from Mr. Matthews requesting a meeting to discuss the TWA plant. CE Officer Kohbarger met with Ms. Sullivan advising Ms. Sullivan of the phone request. Ms. Sullivan stated she would email Mr. Matthews regarding the request.

February 18, 2020 @ 08:25 hrs., CE Officer Kohbarger conducted a site visit to the area and observed TWA plant was just starting up their operations. No odor detected.

February 20, 2020 @ 07:45 hrs. CE Officer Kohbarger conducted a site visit to the area and observed a belly dump truck pulling out of TWA. CE drove around Mound House. No smell/odor detected. CE then observed the plant from the hill overlooking same. Lots of activity but, no odor/smell detected. CE was in the area from 07:45 to 08:22 hrs.

February 27, 2020 @ 08:00 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant with a photo attached. At 08:58 hrs., CE Officers Kohbarger and Johnston conducted a site visit to Mound House after receiving the above-mentioned complaint. An odor was detected throughout the entire complex being emitted from the TWA plant which was operational. CE then proceeded to the hill overlooking the TWA plant. After being up on the hill for about 10 minutes with were met by Mr. Nathan Rash, NDEP Environmental Scientist and his partner who were there due to several complaints they received this morning. While observing the TWA operations, three (03) NDEP Water Pollution employees joined us. They were investigating a water retention pond on TWA property. After ten minutes, the Water Pollution staff requested an escort to the TWA facility since CE knew Mr. Matthews. CE spend approximately 45 minutes on site speaking with Mr. Matthews and observing as the Water Pollution staff performed their jobs/taking water samples from the retention pond. Before leaving the property, NDEP Water Pollution staff presented Mr. Matthews with a Cease and Desist Letter pertaining to the retention Pond.

March 18, 2020 @ 11:10 hrs., CE Officer Kohbarger received an email from Ms. Sullivan, Planning Manager pertaining to an email she received from a citizen of Mound House complaining about the smell of the TWA plant. At 11:24 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

March 20, 2020 @ 11:21 hrs., CE Officer Kohbarger received an email from Mr. Plemel, CDD that TWA will be operating on Sunday, March 22, 2020 pursuant to their SUP specially condition #13.

March 21, 2020 @ 09:21 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 12:21 hrs., CE Officer Kohbarger received another email from a citizen of Mound House complaining about the smell from the TWA plant with photo attached.

March 23, 2020 @ 08:00 hrs., CE Officer Kohbarger received a voice mail from a citizen of Mound House complaining about the smell from the TWA plant. This citizen stated the smell was bad and flumes of smoke was coming from the TWA plant on the following dates: March

17th, 18th, 19th, 20th, and 21st. At 10:13 hrs., CE Officer Kohbarger received an email from Mr. Plemel who forwarded an email from Mr. Matthews advising the TWA plant would not be operating on Sunday (March 22, 2020) but might be operating on Monday (02/23/2020). At 10:50 hrs., CE Officer Johnston was contacted via telephone by a citizen of Mound House complaining about the smell from the TWA plant. At 13:48 hrs., CE Officer Kohbarger conducted a site to Mound House (Carson Highlands sub-division). CE drove around the neighborhood detecting no odors from the TWA plant. CE then proceeded to the hill overlooking the TWA plant and did not detect any odors. TWA plant was operational.

March 24, 2020 @ 10:31 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant with picture.

March 31, 2020 @ 10:07 hrs., CE Officer Kohbarger received two emails, one each from Mr. Plemel and Ms. Sullivan pertaining to voice mails they received from a citizen of Mound House complaining about the smell from the TWA plant.

April 02, 2020 @ 09:00 hrs., CE Officer Kohbarger received an email from Ms. Sullivan pertaining to a voice mail she received from a citizen of Mound House complaining about the smell from the TWA plant.

April 03, 2020 @ 07:31 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell. At 13:30 hrs., CE Officer Kohbarger was contacted via telephone by a citizen of Mound House complaining about the smell. At 14:35 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 15:30 hrs., CDD Plemel conducted a site visit to Mound House. Drove to Miriam Way and Traci Lane, and at the northwest end of Miriam Way. Conditions: Winds estimate 12 mph out of the WSW (as reported at the CC Airport). Report: Smelled a very faint odor of asphalt. Drove to the entrance of the plant, where no odor was detected (due to wind direction). The plant was not in operation at the time.

April 04, 2020 @ 11:22 hrs., CE Officer Kohbarger received an email from Ms. Sullivan pertaining to a voice mail she received from a citizen of Mound House complaining about the smell from the TWA plant.

April 06, 2020 @ 08:54 hrs., CE Officer Kohbarger received a forwarded email from Ms. Sullivan with an attachment. The email was sent to Ms. Sullivan by Mr. Matthews. The attachment was an A1969 Draft NOAVs 2783-2786 letter to Mr. Matthews from NDEP cited several violations and requesting an enforcement conference.

April 08, 2020 @ 14:25 hrs., CE Officer Kohbarger conducted a site visit to (Mound House/Carson Highlands subdivision) and the hill overlooking the TWA plant. No odor detected at either location.

April 10, 2020 @ 09:17 hrs., CE Officer Kohbarger conducted a site to Mound House/Carson Highlands subdivision. Drove throughout the entire subdivision. No odor detected. TWA Plant appears to be operational smoke coming from brown pipe coming out of the bag house. CE then observed the TWA plant from the hill overlooking the plant. Time left was 09:47 hrs.

April 14, 2020 @ 13:14 hrs., CE Officer Kohbarger received a forwarded email from Ms. Sullivan. The email was sent to Ms. Sullivan by Mr. Clarke, Esq, which stated the TWA plant was not operational due to vandalism.

April 15, 2020 @ 10:48 hrs., CE Officer Kohbarger received a forwarded email from Ms. Sullivan. The email was sent to Ms. Sullivan by Mr. Pyzel, Lyon County Planner. The email

was from a Mound House citizen complaining about the TWA plant. At 11:54 hrs., CE Officer Kohbarger received another forwarded email from Ms. Sullivan. The email was a response to the above-mentioned Mound House citizen from Mr. Pyzel.

April 19, 2020 @ 08:38 hrs., CE Officer Kohbarger received a forwarded email from Ms. Sullivan. The email was sent to Ms. Sullivan by Mr. Matthews who requested any additional complaints field on the TWA plant.

April 20, 2020 @ 14:40 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 15:26 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision). Detected a strong odor of asphalt upon entering the subdivision at Highlands & Miriam. Odor continued up Miriam to Traci. After 10 minutes of driving around the subdivision the odor dissipated. Left subdivision at 15:36 hrs. Note: TWA plant was operational, a dump truck was exiting full of asphalt upon arriving.

April 22, 2020 @ 09:57 hrs., CE Officer Kohbarger received an email from Mr. Homestead, Lyon County Code Enforcement. The email had a detailed excel spreadsheet attached detailing all the complaints his department has received pertaining to the TWA plant.

April 30, 2020 @ 09:49 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

May 08, 2020 @ 07:39 hrs., CE Officer Kohbarger received a voice mail from a citizen of Mound House complaining about the smell from the TWA plant.

May 12, 2020 @ 09:57 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 12:47 hrs., CE Officer Kohbarger received another email from a citizen of Mound House complaining about the smell from the TWA plant.

May 18, 2020 @ 14:07 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

May 19, 2020 @ 11:31 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 14:09 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision). CE Officer Kohbarger drove around the entire subdivision stopping in various locations. No asphalt odors were detected. CE Officer Kohbarger then proceeded to the hill overlooking the TWA plant. At 14:45 hrs., CE Officer Kohbarger observed a dump truck receive a load of asphalt. The plant is operational. CE Officer Kohbarger then proceeded back to the subdivision and drove around the subdivision again detecting no asphalt odors. Time left 14:59 hrs.

May 20, 2020 @ 14:33 hrs., CE Officer Kohbarger received a forwarded email from Mr. Plemel with a NDEP NOVA No. 2778 letter attached; cited and fining TWA for a Fugitive Dust violation in the amount of \$500.00.

May 27, 2020 @ 08:49 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 09:30 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Mound House (Carson Highlands subdivision) after received a complaint about smell. CE Officers drove around the entire subdivision detecting no odors for the TWA Plant. CE then proceeded to the hill overlooking the TWA plant. The plant was operational.

May 28, 2020 @ 08:02 hrs., CE Officer Kohbarger was contacted via telephone by a Mound House resident complaining about the smell from the TWA plant. At 08:04 hrs., CE Officer Kohbarger received an email from another citizen of Mound House complaining about the smell from the TWA plant. At 08:20 hrs., CE Officer Kohbarger conducted a site visit to the Mound House (Carson Highlands subdivision) after received the above listed complaints staying in the subdivision until 08:56 hrs. At 08:20 hrs., CE Officer Kohbarger detected a faint odor of asphalt at 241 Miriam and again at 08:42 hrs., at 225 Miriam. At 08:49 hrs., CE Officer Kohbarger detected a strong odor of asphalt at 249 Miriam and again at 08:53 hrs., at 414 Traci. At 08:40 hrs., CE Officer Kohbarger received an email from Ms. Sullivan who was forwarding an email complaint she received pertaining to TWA plant and smell. This complaint alleged that the TWA plant was operating at 11:20 p.m. on May 27, 2020. At 09:03 hrs., CE Officer Kohbarger arrived at the TWA plant where he was greeted by Mr. Matthews. After several minutes of talking, CE Officer Kohbarger contacted via telephone Ms. Sullivan placing her on a speaker call with Mr. Matthews listening to the call. During this call we discussed Mr. Matthews (TWA plant) operating hours. NOTE: CE Officer Kohbarger recorded three videos of the TWA plant operating showing smoke coming from the TWA smokestack. At 09:05 hrs., CE Officer received another email from Ms. Sullivan who forwarded yet another complaint she received via telephone. At 09:25 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

May 29, 2020 @ 06:57 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

June 02, 2020 @ 08:59 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. 09:30 hrs. – 09:45 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Mound House (Carson Highlands subdivision) after receiving a complaint. CE Officers drove around the subdivision for 15 minutes detecting no odors from the TWA plant.

June 03, 2020 @ 08:29 hrs., CE Officer Johnston was contact via telephone by a Mound House citizen complaining about the smell from the TWA plant. At 08:48 hrs., CE Officer Kohbarger received an email from another citizen of Mound House complaining about the smell from the TWA plant. At 09:05 hrs. – 09:46 hrs., CE Officers Kohbarger and Johnston conducted a site visit to the Carson Highlands subdivision. CE Officers detected numerous strong asphalt odors at 245 and 243 Miriam Way over a 41-minute period. Photos and video taken. Clouds of smoke kept coming over the hill and dropping down into the subdivision. Strong odors persist.

June 04, 2020 @ 7:58 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 08:01 hrs., CE Officer Kohbarger was contacted via telephone by another Mound House resident complaining about the smell from the TWA plant.

June 05, 2020 @ 7:26 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 09:08 hrs., CE Officer Kohbarger was contacted via telephone by another Mound House resident complaining about the smell from the TWA plant. At 09:48 hrs., CE Officer received an email from Ms. Sullivan who forwarded yet another complaint she received via telephone.

June 06, 2020 @ 6:44 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 9:23 hrs., CE Officer received an email from Ms. Sullivan who forwarded yet another complaint she received via telephone.

June 08, 2020 @ 10:38 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 12:02 and 12:43 hrs., CE Officer Kohbarger received two emails from a citizen of Mound House complaining about the smell from the TWA plant.

June 11, 2020 @ 06:01 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 09:00 hrs., CE Officer Kohbarger conducted a site visit to Mound House (Carson Highlands subdivision). During the visit, CE met with Mr. Homestead, LCCE and a Mound House resident. No odors detected. CE drove around entire subdivision.

July 01, 2020 @ 08:03 hrs., CE Officer Kohbarger received a forwarded voice mail from the Planning Department from a citizen of Mound House complaining about the smell from the TWA plant.

July 07, 2020 @ 13:22 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

July 14, 2020 @ 05:41 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant. At 09:07 hrs., CE Officer Kohbarger received another email from the same citizen of Mound House complaining about the smell from the TWA plant. NOTE: 08:25 hrs. to 08:57 hrs., CE Officer Kohbarger conducted a site visit to the Mound House (Carson Highlands subdivision) area. CE Officer Kohbarger drove around the community for 20 minutes detecting no odors. At 08:46 hrs., CE Officer Kohbarger drove to the hill overlooking the TWA plant. CE Officer Kohbarger remained on the hill until 08:57 hrs. during which time he observed little activity. No trucks entered the plant to load with asphalt, the loader was not loading material, and no smoke was coming from the smokestack. At 09:37 hrs., CE Officer Kohbarger received yet another email from the same citizen of Mound House complaining about the smell from the TWA plant. At 13:32 hrs., CE Officer Kohbarger received yet another email from the same citizen of Mound House complaining about the smell from the TWA plant. At 13:34 hrs., CE Officer Kohbarger received yet another email from the same citizen of Mound House complaining about the smell from the TWA plant.

August 19, 2020 @ 11:15 hrs., CE Officer Kohbarger received an email from a citizen of Mound House complaining about the smell from the TWA plant.

September 17, 2020 @ 7:58 a.m., CE Officer Kohbarger conducted a site visit and observed no activity.



August 14, 2020

Robert Matthews
Owner
Tahoe Western Asphalt, LLC
P.O. Box 21645
Carson City, NV 89721

**RE: Notice of Alleged Air Quality Violation and Order Nos. 2783, 2784, and 2786
Class II Air Quality Operating Permit 1611-3748 (FIN A1969)**

Dear Mr. Mathews:

The Nevada Division of Environmental Protection (NDEP) alleges that Tahoe Western Asphalt, LLC (TWA) has violated one or more conditions of its Class II Air Quality Operating Permit No. AP1499-0504.03 (AQOP).

On April 16, 2020, NDEP held an enforcement conference with TWA to determine whether issuance of Notices of Alleged Air Quality Violation and Order (NOAV) Nos. 2783, 2784, and 2786 were or were not warranted. During the enforcement conference TWA did not supply evidence that NOAV Nos. 2783, 2784, and 2786 did not occur. Based on the information provided by TWA, NDEP has determined that formal issuance of NOAV Nos. 2783, 2784, and 2786 are warranted.

In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, NOAV Nos. 2783, 2784, and 2786 constitutes major violations. For the purpose of determining the modifiers for the history of non-compliance, TWA's has been issued nine prior NOAVs within the last 60 months. Pursuant to NAC 445B.281, the alleged violations under NOAV No. 2784 are major violations due to the violations issued under NOAV No. 2602, on January 24, 2017, being a first, second, and third offense minor violations of NAC 445B.275.1.e in the previous 60 months.

NDEP makes recommendations to the Nevada State Environmental Commission (SEC) as to what an appropriate penalty may be for an air quality violation. The date for the next SEC hearing has not been determined. It is possible that the SEC hearing will be conducted by teleconference due to COVID. You will be notified when the time and location for the hearing has been finalized.

Appeals of NOAV & Orders Nos. 2783, 2784 and 2786 may be requested pursuant to **Nevada Revised Statute (NRS) 445B.360 Appeals to Commission: Appealable matters; action by Commission; regulations** and SEC administrative rules. A copy of SEC Appeal Form #3 is enclosed. Appeals must be received within ten (10) days of receipt of this notice, pursuant to **NRS 445B.340 Appeals to Commission: Notice of appeal**. A copy of SEC Appeal Form #3 is enclosed and can also be found on the SEC website at: <https://sec.nv.gov/participate/forms-and->

Tahoe Western Asphalt
August 14, 2020
Page 2 of 2

documents/. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada, 89701-5249. Mrs. King can be reached at (775) 687-9374, or by email at yking@ndep.nv.gov. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding this matter, please contact me at ddragoni@ndep.nv.gov (preferred) or at (775) 687-9340 (response may be delayed due to limited presence in the office because of the COVID-19 emergency).

Sincerely,



Danilo Dragoni
Chief
Bureau of Air Quality Planning

DD/ajt/dd

enc.: 1. Notices of Alleged Air Quality Violation and Order No. 2783, 2784, and 2786
2. SEC Form #3

cc (w/enc.): Valerie King, SEC
Carson City County Board of County Commissioners
FIN A0739 (Certified Copy)

E-Copy: Greg Lovato, P.E. Administrator, NDEP
Frederick "Rick" Perdomo, Esq., Deputy Administrator, NDEP
Jeffrey Kinder, P.E., Deputy Administrator, NDEP
Lisa Kremer, P.E., Chief, BAPC
Andrew Tucker, Supervisor, Enforcement Branch, BAQP
Travis Osterhout, P.E., Supervisor, Compliance Branch, BAPC
Tanya Soleta, P.E., Supervisor, Permitting Branch, BAPC
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC
David Dragon, Enforcement Staff, BAQP
Jeremy B. Clarke, Esq., Simons Hall Johnston PC
Peter P. Handy, Deputy Attorney General, Nevada Office of the Attorney General
Rob Pyzel, Planner, Planning Department, Lyon County
Lee Plemel, Community Development Director, Carson City

Certified Mail No.: 9171 9690 0935 0238 8352 97

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR QUALITY PLANNING
901 SOUTH STEWART ST., SUITE 4001
CARSON CITY, NEVADA 89701-5249

NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2783

Person(s) to Whom Served: Robert Matthews, Owner
Company Name: Tahoe Western Asphalt, LLC
Address: P.O. Box 21645, Carson City, NV 89721
Permit Number: AP1611-3748 **FIN:** A1969
Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89701
Date of Observation: March 23 & 24, 2020 **Time:** N/A

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. *Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:*

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to maintain permit-required air pollution controls.

Evidence:

Tahoe Western Asphalt, LLC (TWA) currently holds Class II Air Quality Operating Permit (AQOP) AP1611-3748 to operate a hot mix asphalt plant. The AQOP was issued by the Nevada Division of Environmental Protection (NDEP) on May 23, 2016.

On March 23, 2020, NDEP staff conducted a full on-site inspection of the TWA facility. The plant was not operating when NDEP staff arrived on-site. Upon request of NDEP staff, the plant equipment was activated and aggregate was processed to demonstrate the equipment in operation. NDEP staff attempted to verify that the emission controls were present and operational. NDEP staff observed that the permit-required fogging water spray (FWS) for one emission unit under System 1 (PF1.002) was installed but was not operating. NDEP staff noted that Mr. Matthews stated that the FWS had not been operating because they freeze in the cold weather. NDEP staff advised Mr. Matthews that the air pollution controls must be operating if the process equipment is operating.

On March 24, 2020, NDEP staff returned the facility to review facility records that were not on-site on the previous day. While on-site, NDEP staff observed that the plant was in operation, but the air pollution controls for System 1 still did not appear to be in operation.


On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. During the enforcement conference Mr. Clarke informed NDEP that TWA was not contesting the alleged violation for failure to maintain controls.

After the enforcement conference Mr. Clarke was allowed time to confer with his client before following up with additional information. In Mr. Clarke's follow-up response on May 1, 2020, there was also no indication that TWA was contesting the alleged violation.

Based on the information provided by TWA's legal counsel during the enforcement conference the NDEP has determined that issuance of NOAV No. 2783 is warranted. In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation.

Signature _____ 

Issued by: Danilo Dragoni, PhD
 Chief
 Bureau of Air Quality Planning

Phone: 775-687-9340 **Date:** August 14, 2020

DD/at

Certified Mail No.: 9171 9690 0935 0238 8352 97

This NOAV and Order becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR QUALITY PLANNING
901 SOUTH STEWART ST., SUITE 4001
CARSON CITY, NEVADA 89701-5249
NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2784

Person(s) to Whom Served: Robert Matthews, Owner
Company Name: Tahoe Western Asphalt, LLC
Address: P.O. Box 21645, Carson City, NV 89721
Permit Number: AP1611-3748 **FIN:** A1969
Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89701
Date of Observation: March 23 & 24, 2020 **Time:** N/A

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to conduct permit-required recordkeeping and monitoring.

Evidence:

Tahoe Western Asphalt, LLC (TWA) currently holds a Class II Air Quality Operating Permit (AQOP) to operate a hot mix asphalt plant under the requirements of AQOP AP1611-3748, issued by the Nevada Division of Environmental Protection (NDEP) on May 23, 2016.

On March 23, 2020, NDEP staff conducted a full on-site inspection of the TWA facility. During the inspection, NDEP staff attempted to conduct a complete records review. At that time TWA was only able to provide records for the daily plant-wide production totals, operational dates, and total daily hours of operation for January 4, 2019, to November 23, 2019. Mr. Matthews, the owner of TWA, indicated that he had more records at home and offered to allow the NDEP staff to accompany him to his home to retrieve them, but the offer was declined. NDEP staff requested that Mr. Matthews bring the records to the facility the following day, at which point they would return to review the records at that time.

On March 24, 2020, NDEP staff reviewed the remaining records that TWA was able to produce. The provided records consisted of:

1. Logs of hours of operation and drum temperatures for System 2 (S2.001) from April 8, 2017 to November 25, 2019.
2. Records of that EPA Method 9 Visual Emission Observations (VEO) conducted on one day, August 12, 2018, for Systems 1, 3, 4, and 5 (PF1.001-PF1.012, and S2.002).
3. Records of twelve Method 9 VEOs for System 2 (S2.001).

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

The permit requires TWA to maintain a contemporaneous log of each parameter identified in sections V.A.4, V.B.4, V.C.4, V.D.4, and V.E.4 of the AQOP. Based on the records provided during the inspection, TWA has not met the monitoring recordkeeping requirements for Systems 1 through 5.

On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. NDEP agreed to allow Mr. Clarke to confer with his client before responding to some questions from NDEP. During the conference Mr. Clarke indicated that some of TWA's records were allegedly stolen by a former employee and that TWA was trying to recover these records. The records that were allegedly stolen have not been produced and no evidence was provided to support the claim.

On May 1, 2020, Mr. Clarke emailed written commentary to NDEP with TWA's concerns regarding the alleged violations. TWA's contention of the alleged violations were based on the following additional points:

1. TWA asserted that their recordkeeping requirements were limited to hours of operation, throughput/tonnage and fuel usage and those records were provided.
2. TWA also asserted that EPA Method 9 VEOs cannot be conducted when making minimal tonnages of asphalt mix.
3. The VEOs could not be completed because TWA's EPA Method 9 VEO certification had expired.
4. TWA alleged that a portion of their records had been stolen.

On May 7, 2020, NDEP held a follow-up call with Mr. Clarke and to discuss the contentions that TWA identified. Additionally, the NDEP also provided additional feedback with regard to the recordkeeping deficiencies through a number of emails with TWA and their legal counsel. For the following reasons NDEP believes TWA's arguments fail to demonstrate that the alleged violations did not occur:

1. The records that were provided to NDEP staff for review during the inspection records did not include records for each permitted system as required by the AQOP.
2. The records TWA provided for inspection did not meet the hourly, monthly or annual requirements for material throughput, fuel usage, or hours of operation.
3. The records were substantially deficient in the requirements to monitor and record the weekly or monthly Method 9 VEOs required for each System. This requirement is not conditional on the facility having someone on staff that is certified to conduct Method 9 VEOs. TWA could have contracted a third party to conduct Method 9 VEOs if they did not have staff that were certified to conduct them.
4. A Method 9 VEO takes six minutes to conduct. TWA has not provided evidence to support the claim that VEOs could not be conducted due to limited operations of the plant.
5. Records of the daily observations of visible emission for System 2 were deficient.
6. There is a significant period of time since operations started at the facility in 2016 that TWA was unable to provide even partial records. The AQOP requires that records be maintained for five years.
7. No additional information was provided to corroborate TWA's claim that the records had been stolen.

Based on the information provided by TWA's legal counsel during and after the enforcement conference the NDEP has determined that issuance of NOAV No. 2784 is warranted. In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation. TWA's first, second, and third instance of a minor violations for NAC 445B.275.1.e were issued in NOAV No. 2602 on January 24, 2017.

Signature _____

Issued by: Danilo Dragoni, PhD
Chief
Bureau of Air Quality Planning

Phone: 775-687-9340 Date: August 14, 2020

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

DD/at

Certified Mail No.: 9171 9690 0935 0238 8352 97

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

STATE OF NEVADA
 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
 DIVISION OF ENVIRONMENTAL PROTECTION
 BUREAU OF AIR QUALITY PLANNING
 901 SOUTH STEWART ST., SUITE 4001
 CARSON CITY, NEVADA 89701-5249
NOTICE OF ALLEGED AIR QUALITY VIOLATION NO. 2786

Person(s) to Whom Served: Robert Matthews, Owner
Company Name: Tahoe Western Asphalt, LLC
Address: P.O. Box 21645, Carson City, NV 89721
Permit Number: AP1611-3748 **FIN:** A1969
Site of Alleged Violation: 8013 US 50 East, Carson City, Nevada 89701
Date of Observation: March 23 & 24, 2020 **Time:** N/A

It is alleged that the following regulation was violated by the person named in this notice:

Nevada Administrative Code (NAC) 445B.275 Violations: Acts constituting; notice.

1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(c) Failure to construct or operate a stationary source in accordance with any condition of an operating permit;

It is alleged that the following act or practice constitutes the violation:

Failure to comply with permitted opacity limits.

Evidence:

Tahoe Western Asphalt, LLC (TWA) currently holds Class II Air Quality Operating Permit (AQOP) AP1611-3748 to operate a hot mix asphalt plant under. The AQOP was issued by the Nevada Division of Environmental Protection (NDEP) on May 23, 2016.

On March 23, 2020, NDEP staff investigated the complaints and observed opacity emitting from the stack for System 2 - Asphalt Plant Drum Dryer Mixer/Burner (S2.001). NDEP staff conducted four six-minute Method 9 Visual Emission Observations (VEO) on S2.001 between 8:50 am and 10:00 am. The average opacities for each of the Method 9 VEOs were 62.5%, 25%, 63.5%, and 53.5%. The AQOP and 40 CFR Part 60.92(a)(2) restrict opacity in excess of 20% to be emitted from S2.001. The individual opacity readings that were taken during each of the four Method 9 VEOs are listed in the four tables below.

Table 1: Method 9 Visible Emission Observations

Method 9 VEO #1 – Date: 3/23/2020 – Time: 8:53am - 8:59am				
	Seconds: 0	Seconds: 15	Seconds: 30	Seconds: 45
Minute: 1	45%	45%	45%	45%
Minute: 2	50%	50%	60%	70%
Minute: 3	70%	70%	70%	75%
Minute: 4	70%	75%	70%	70%
Minute: 5	65%	65%	70%	60%
Minute: 6	60%	70%	70%	60%

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

Table 24: Method 9 Visible Emission Observations (continued)

Method 9 VEO #2 – Date: 3/23/2020 – Time: 8:59am - 9:05am				
	Seconds: 0	Seconds: 15	Seconds: 30	Seconds: 45
Minute: 1	45%	50%	50%	50%
Minute: 2	45%	30%	25%	30%
Minute: 3	25%	25%	20%	20%
Minute: 4	20%	20%	15%	15%
Minute: 5	15%	15%	15%	15%
Minute: 6	15%	15%	10%	15%
Method 9 VEO #3 – Date: 3/23/2020 – Time: 9:31am - 9:37am				
	Seconds: 0	Seconds: 15	Seconds: 30	Seconds: 45
Minute: 1	75%	75%	70%	75%
Minute: 2	80%	80%	75%	70%
Minute: 3	70%	70%	75%	70%
Minute: 4	80%	90%	100%	90%
Minute: 5	80%	90%	40%	15%
Minute: 6	15%	10%	15%	15%
Method 9 VEO #4 - 3/23/2020 - 9:41am - 9:47am				
	Seconds: 0	Seconds: 15	Seconds: 30	Seconds: 45
Minute: 1	90%	90%	90%	95%
Minute: 2	90%	95%	95%	95%
Minute: 3	100%	85%	40%	40%
Minute: 4	40%	35%	35%	30%
Minute: 5	30%	25%	20%	15%
Minute: 6	15%	10%	10%	15%

On April 16, 2020, NDEP held an enforcement conference with TWA by teleconference. TWA was represented by Mr. Jeremy B. Clarke, Esq., as TWA's legal counsel. The enforcement conference was held to discuss alleged violations, including the alleged violations listed in this NOAV, and provide an opportunity for TWA to provide evidence that the alleged violations did not occur. During the enforcement conference NDEP and TWA agreed to allow Mr. Clarke to confer with his client before responding to some questions from NDEP.

On May 1, 2020, Mr. Clarke emailed written commentary to NDEP with TWA's concerns regarding the alleged violations. TWA's contention of the alleged violation was based on the following three main points:

1. TWA was not operating continuously from 8:50 am to 10:00 am on March 23, 2020.
2. NDEP's staff did not have valid certifications to conduct EPA Method 9 VEOs at the time they were conducted.
3. TWA asserted that EPA Method 9 VEOs are not valid if conducted under overcast conditions.

On May 7, 2020, NDEP held a follow-up call with Mr. Clarke and to discuss the contentions that TWA identified. The NDEP responded to TWA's contentions as follows:

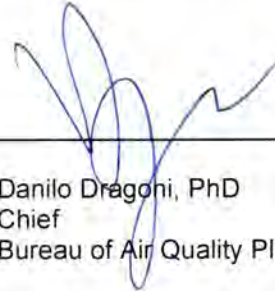
1. The NDEP clarified that it was not asserting that the facility was operating continuously from 8:50 am and 10:00 am on March 23, 2020 but had just used the time range to give a general description of the timing of the event and specific times of the VEOs were given in Table 1.
2. The NDEP informed Mr. Clarke that both compliance officers that conducted the Method 9 VEOs had valid certifications to conduct EPA Method 9 VEOs at the time they were conducted.
3. NDEP informed Mr. Clarke that we were unaware of such a requirement and if he could provide documentation to support the assertion that partial cloud cover that was present at the time of the VEOs would invalidate the results. No documentation was ever provided by TWA to support their claim. NDEP staff also reviewed EPA's

This NOAV becomes final unless appealed within ten (10) days after the notice. The person named in this notice may appeal the notice by submitting a written request for a hearing to the Chairman of the Environmental Commission, 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249.

documentation for requirements for conducting valid EPA Method 9 VEOs and found nothing indicating that partial cloud cover would invalidate the results.

After taking into consideration the information provided by TWA's counsel, the NDEP has determined that issuance of NOAV No. 2786 for one event of failure to comply with the opacity is warranted for one event of exceeding the permitted opacity limit. In accordance with **NAC 445B.281 Violations: Classification; administrative fines**, the alleged violation constitutes a major violation.

Signature _____



Issued by: Danilo Dragoni, PhD
Chief
Bureau of Air Quality Planning

Phone: 775-687-9340 Date: August 14, 2020

DD/ajt

Certified Mail No.: 9171 9690 0935 0238 8352 97



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

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

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 or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

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

Date of Request: _____.

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



August 14, 2020

Robert Matthews
Owner
Tahoe Western Asphalt, LLC
P.O. Box 21645
Carson City, Nevada 89721

**RE: STOP ORDER NO. 2021EA-02
TAHOE WESTERN ASPHALT, LLC**

Dear Mr. Matthews:

Tahoe Western Asphalt, LLC (TWA) was issued draft Notice of Alleged Violation (NOAV) No. 2784 by the Nevada Department of Environmental Protection (NDEP), which alleged that TWA failed to comply with the requirements of Air Quality Operating Permit (AQOP) AP1611-3748 pursuant to NAC 445B.275.e. Subsequent to the enforcement conferences that the NDEP held with TWA's legal counsel, TWA was issued Order 2020-E-11A (Order) on May 14, 2020, which required TWA to return to compliance with regard to the recordkeeping and monitoring requirements specified in the AQOP that TWA had allegedly violated. The Order mandated that TWA would immediately comply with the AQOP requirements, provide records to the NDEP fourteen (14) days after delivery of the order, and submit follow-up reports to the NDEP every two weeks thereafter.

Recordkeeping and monitoring of emission units are crucial elements to demonstrate that TWA is operating within the limits that meet federal and state ambient air quality standards and therefore is protective of human health. Because TWA has not performed complete recordkeeping and reporting, NDEP cannot verify compliance with the operating limits. Therefore, NDEP cannot verify that TWA is operating in such a way that is protective of human health.

Based on the information available, NDEP has reason to believe that TWA has failed to comply with following requirements pursuant to Nevada Administrative Code (NAC) 445B.275:

1. Failure to comply with any requirement of NAC 445B.001 to 445B.3689, inclusive, any applicable requirement or any condition of an operating permit constitutes a violation. As required by NRS 445B.450, the Director shall issue a written notice of an alleged violation to any owner or operator for any violation, including, but not limited to:

(e) Failure to comply with any requirement for recordkeeping, monitoring, reporting or compliance certification contained in an operating permit;

Stop Order No. 2021EA-02 (Stop Order), attached hereto, orders TWA **to cease operation of all emission units** located at 8013 U.S. Highway 50 East, Carson City, Nevada starting on Close of Business on August 25, 2020. The Stop Order is in accordance with **NAC 445B.277 Stop orders**, which states in part:

2. A stop order may be issued at any time by the Director upon his or her determination that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3689, inclusive any applicable requirement or any condition of the operating permit.

Please be advised that you must comply with the terms of Stop Order 2021EA-02 until the order is revoked by NDEP or, if the order is appealed, until the SEC rules that the order should be revoked. Failure to comply with the terms of the order is a violation punishable by a penalty of up to \$10,000 per day per violation, pursuant to **NAC 445B.281**.

In order for NDEP to suspend the Stop Order before it goes into effect, TWA must:

1. Adhere to all monitoring and recordkeeping requirements specified in the AQOP.
2. Submit to NDEP records demonstrating that TWA is fully compliant with all monitoring and recordkeeping of the AQOP. The submitted records must at least include the period from August 17, 2020 to August 23, 2020, inclusive.

The records demonstrating that the above requirements have been met must be submitted to NDEP by no later than 5:00 pm on August 24, 2020. Failure to submit records demonstrating compliance by the specified date and time, or submitting records that fail to demonstrate compliance with the monitoring and recordkeeping requirements of the AQOP will result in the Stop Order going into effect until it is revoked or rescinded by NDEP.

Documentation of the records and weekly VEO's can be submitted by email to ddragoni@ndep.nv.gov or addressed to:


Nevada Division of Environmental Protection – BAQP
 Attn: Danilo Dragoni
 901 South Stewart Street, Suite 4001
 Carson City, NV 89701

If you believe this action is not warranted, an appeal of Stop Order No. 2021EA-02 may be requested pursuant to **Nevada Revised Statute (NRS) 445B.360** and State Environmental Commission (SEC) administrative rules. A copy of SEC Appeal Form #3 is enclosed and may also be found at <https://sec.nv.gov/participate/forms-and-documents/>. The request for an appeal must be received within ten (10) days of receipt of this notice, pursuant to **NRS 445B.340**. Appeals are processed through Valerie King, the Executive Secretary for the SEC, at 901 South Stewart Street, Suite 4001, Carson City, Nevada 89701-5249. Ms. King can be reached at (775)

687-9374, or by fax at (775) 687-5856. Please provide me with a copy of any correspondence your company may have with the SEC.

If you have any questions regarding this matter, please contact me at ddragoni@ndep.nv.gov (preferred) or at (775) 687-9340 (response may be delayed due to limited presence in the office because of the COVID-19 emergency).

Sincerely,



Danilo Dragoni
Chief
Bureau of Air Quality Planning

DD/ajt/dd

Enc.: 1. Stop Order No, 2021EA-02
2. SEC Appeal Form #3

cc (w/enc.): Valerie King, SEC

E-Copy: Greg Lovato, P.E. Administrator, NDEP
Frederick "Rick" Perdomo, Esq., Deputy Administrator, NDEP
Jeffrey Kinder, P.E., Deputy Administrator, NDEP
Lisa Kremer, P.E., Chief, BAPC
Andrew Tucker, Supervisor, Enforcement Branch, BAQP
Travis Osterhout, P.E., Supervisor, Compliance Branch, BAPC
Tanya Soleta, P.E., Supervisor, Permitting Branch, BAPC
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC
David Dragon, Enforcement Staff, BAQP
Jeremy B. Clarke, Esq., Simons Hall Johnston PC
Peter P. Handy, Deputy Attorney General, Nevada Office of the Attorney General
Rob Pyzel, Planner, Planning Department, Lyon County
Lee Plemel, Community Development Director, Carson City

Certified Mail No.: 9171 9690 0935 0218 6885 85

IN THE MATTER OF:)
TAHOE WESTERN ASPHALT, LLC)
CARSON CITY, NEVADA)

STOP ORDER NO. 2021EA-02

Company Served: Robert Matthews, Owner
Company Name: Tahoe Western Asphalt
Address: P.O. Box 21645, Carson City, Nevada 89721
Effective Date: Close of Business on August 25, 2020

Under the authority of the Nevada Administrative Code (NAC) 445B.277.2:

2. A stop order may be issued at any time by the Director upon his or her determination that there has been a violation of any of the provisions of NAC 445B.001 to 445B.3689, inclusive any applicable requirement or any condition of the operating permit.

The Nevada Division of Environmental Protection is ordering Tahoe Western Asphalt, LLC to cease operation of all emission units located at 8013 U.S. Highway 50 East, Carson City, Nevada.

The following act or practices give rise to the issuance of this Stop Order:

Based on a review of the records submitted by Tahoe Western Asphalt, LLC (TWA) in response to the requirements of Notice of Findings and Order No. 2020-E-11A, TWA has allegedly failed to comply with the monitoring and recordkeeping requirements of Air Quality Operating Permit (AQOP) No. AP1611-3748. Failure to comply with the monitoring and recordkeeping requirements of an AQOP is a violation pursuant to NAC 445B.275.

August 14, 2020
Date



Greg Lovato
Administrator
Nevada Division of Environmental Protection

Certified Mail No.: 9171 9690 0935 0218 6885 85

Form #3
Request an Appeal Hearing
Revised 6-2012



NEVADA
**STATE ENVIRONMENTAL
COMMISSION**

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

Name: _____

Physical Address: _____

E-mail Address: _____

Telephone Number: _____

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 or regulations that give the State Environmental Commission jurisdiction to hear the appeal.

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

Date of Request: _____.

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



August 26, 2020

Robert Matthews
Owner
Tahoe Western Asphalt, LLC
P.O. Box 21645
Carson City, Nevada 89721

**RE: STOP ORDER NO. 2021EA-02
TAHOE WESTERN ASPHALT, LLC**

Dear Mr. Matthews:

On August 24, 2020, NDEP received the following information from Tahoe Western Asphalt, LLC (TWA) and its representatives:

- a spreadsheet with records for System 1 through System 3
- a document with a number of addendums to the records
- a document describing the methodology used to estimate propane consumption
- three charts depicting propane levels in a storage tank
- a document with a table of values of propane levels in a storage tank
- three Method 9 VEO forms
- a letter from you to Greg Lovato and Danilo Dragoni
- a letter from Mr. Clarke stating that the aforementioned documents were being submitted on TWA's behalf and in response to Stop Order 2021EA-02

Some of these documents were received by hand delivery and other were provided in an email sent by TWA counsel Mr. Jeremy Clarke. NDEP Air Program Enforcement Staff reviewed all of the records and documents that were provided.

Based on our review of the records provided by TWA for activities that occurred at the facility in the period from August 17, 2020 to August 23, 2020, inclusive, the Nevada Division of Environmental Protection has deemed that the Stop Order 2021EA-02 issued on August 14, 2020 (attached) requiring TWA to cease operation of all emission units shall be effective beginning on August 26, 2020.

The decision is based on, but not limited to, the following findings:

1. Daily aggregate throughput, hours of operation, and stack outlet temperature for System 2 are required to be monitored and recorded using a data logger system by the air quality operating permit. No evidence was provided that a datalogger system was used to collect the required data and no stack temperature records were provided.
2. Monitoring of the propane usage is required by the operating permit. TWA did not provide any indication that such monitoring has been implemented or even considered or attempted. In addition, the claim that the installation of a meter device would pose a safety hazard is not documented, and anecdotal at best.
3. According to what was discussed during the enforcement conference (April 16, 2020), you are not currently certified for Method 9 VEO testing. Therefore, the weekly Method 9 VEO for system 2 cannot be considered valid. NDEP is accepting expired Method 9 certification as long as the certification expired after Governor's Sisolak Declaration of Emergency due to COVID-19 (March 13, 2020).
4. The operational status of the equipment at the facility for the last three days of records that were required is ambiguous. In particular, there are multiple ways used to positively identify non operational periods, but none of this ways are clearly documented or defined.
5. A statement made after the fact that equipment on-site was not operated during a period of time, such as was made for Systems 4 and 5, does not meet the requirements for contemporaneous records unless there is additional documentation demonstrating the equipment could not have been operated.
6. Documentation submitted by TWA with the records stated that reported hourly aggregate throughputs may be incorrect. The documentation does not specify for which systems this comment applies to. TWA cited deficiencies in the reporting format for the inaccuracies. It is TWA's responsibility to ensure that the format for recordkeeping is adequate and that recordkeeping provides an accurate representation of the operations of the equipment.

As stated in NDEP's August 14, 2020 cover letter to the Stop Order, recordkeeping and monitoring of emission units are crucial elements to demonstrate that TWA is operating within the limits that meet federal and state ambient air quality standards and therefore is protective of human health. Because TWA has not performed complete recordkeeping and reporting, NDEP cannot verify compliance with the operating limits. Therefore, NDEP cannot verify that TWA is operating in such a way that is protective of human health.

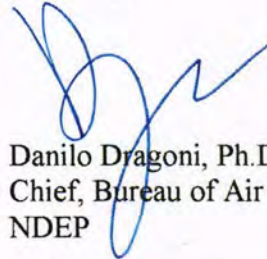
Please also note that Stop Order 2021EA-02 is not automatically stayed by the filing of an administrative appeal¹ and/or bankruptcy petition.²

¹ Stop Orders issued by the Director or his designee are not automatically stayed by administrative appeal to the SEC. See NAC 445B.277; 875-899 (failing to provide for an automatic stay of a Stop Order); NRS 445B.340-360 (failing to provide for an automatic stay of an appealed-from order); NRS 233B.140 (providing for a stay of only a final decision and only by motion in proceedings for judicial review before a District Court).

² Environmental enforcement actions are exempt from Bankruptcy stays under 11 U.S.C. Section 362(b)(4), the exception for police or regulatory power. See *United States v. Nicolet, Inc.*, 857 F.2d 202 (3d Cir. 1988); *In re Phillips*, 368 B.R. 733, 738 (Bankr. N.D. Ind. 2007) ("Section 362(b)(4) provides that the filing of a petition does not operate as a stay of 'the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.' The term 'police or regulatory power' is not defined in the Bankruptcy Code. However, the statute's legislative history states that § 362(b)(4) includes a governmental unit's suits against a debtor 'to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws.' H.R.Rep. No. 595, 95th Cong., 1st Sess. 343 (1977)"); *In re Commonwealth Oil Ref. Co., Inc.*, 58 B.R. 608, 611 (Bankr. W.D. Tex. 1985), *aff'd sub nom. Matter of Commonwealth Oil Ref. Co., Inc.* (W.D. Tex. Nov. 5, 1985) ("EPA's potential enforcement action, however, is designed to obtain CORCO's compliance with hazardous waste, storage and disposal regulations and falls squarely within the exception to the automatic stay codified at 11 U.S.C. § 362(b)(4).").

If you have questions regarding this correspondence, please contact Danilo Dragoni at ddragoni@ndep.nv.gov. If your legal counsel has any questions please contact Peter Handy at the Nevada Attorney General's Office, phandy@ag.nv.gov.

Sincerely,



Danilo Dragoni, Ph.D.
Chief, Bureau of Air Quality Planning
NDEP

DD/ajt

cc (w/enc.): Valerie King, SEC

E-Copy: Greg Lovato, P.E., Administrator, NDEP
Frederick "Rick" Perdomo, Esq., Deputy Administrator, NDEP
Jeffrey Kinder, P.E., Deputy Administrator, NDEP
Lisa Kremer, P.E., Chief, BAPC
Andrew Tucker, Supervisor, Enforcement Branch, BAQP
Travis Osterhout, P.E., Supervisor, Compliance Branch, BAPC
Tanya Soleta, P.E., Supervisor, Permitting Branch, BAPC
Ashley Taylor, P.E., GISP, Permitting Supervisor, BAPC
David Dragon, Enforcement Staff, BAQP
Jeremy B. Clarke, Esq., Simons Hall Johnston PC
Peter P. Handy, Deputy Attorney General, Nevada Office of the Attorney General
Rob Pyzel, Planner, Planning Department, Lyon County
Lee Plemel, Community Development Director, Carson City

Certified Mail No.: 9171 9690 0935 0218 7478 55

From: [Danilo Dragoni](#)
To: [Robert Matthews](#)
Cc: glmccleary@charter.net; [Peter P. Handy](#); [Mark Simons](#); [Jeremy Clarke](#)
Subject: A1969, AP1611-3748, Tahoe Western Asphalt, LLC. Modeling results
Date: Thursday, October 15, 2020 4:33:40 PM

Mr. Matthews,

As you are aware, part of the process of evaluating your permit application (like any other permit application) is to verify that the operations at TWA will not cause emissions that could cause exceedances of the national and state air quality standards. This is done by using an EPA approved air pollutant dispersion modeling tool. I am sure Gay will be able to explain all the details, if needed.

NDEP has completed the modeling analysis for Tahoe Western Asphalt. Based on the operating conditions requested in the current application, we established that the following standards will not be met:

PM₁₀24 Hr.

PM_{2.5}24 Hr.

PM_{2.5}Annual

Until the modeling analysis shows compliance with the air quality standards, NDEP won't be able to continue working and issuing the permit.

In order to solve this issue, could you please

- a) provide the height of the bottom and the top of the screen above ground level at the location of the screen
- b) let us know what restrictions you would like to propose to implement in order to show compliance with the Nevada Ambient Air Quality Standards, and the National Ambient Air Quality Standards

This request for additional information is pursuant to the authority of Nevada Revised Statutes (NRS) 445B.210, NRS 445B.300, and Nevada Administrative Code (NAC) 445B.297. The permit issuance timeline will be extended by the corresponding number of days it takes to receive a complete response and determine permit restrictions that show compliance with the Nevada Ambient Air Quality Standards, and the National Ambient Air Quality Standards beginning today.

Because this issue is highly technical, and in the interest of solving it as quickly as possible, I would propose that direct communication between Gay and our modeling team (and only between Gay and our modeling team) could proceed without having to go through me, you, or our legal counsels. Our modeling team will keep me posted on the progress. Any

communication regarding any other topic, or involving other people, will still go only through me.

If you agree, I am sure we can start working on solving this issue right away.

Danilo Dragoni, PhD
Chief
Bureau Of Air Quality Planning
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
[901 S. Stewart Street, Suite 4001](#)
[Carson City, NV 89701](#)
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PUBLIC HEARING

E.4 2010-00000115 - (SUP-10-115-2): FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE REVOCATION OR REEXAMINATION OF SPECIAL USE PERMIT SUP-10-115 FOR THE ASPHALT PLANT LOCATED AT 8013 HIGHWAY 50 EAST, APNS 008-611-31, -33, -37 AND -41.

(5:07:30) – Chairperson Borders introduced the item. Mr. Plemel outlined the hearing process noting that he would summarize the issues and invite Mr. Johnson to provide additional comment, after which the applicant representatives would have an opportunity to respond to the findings. Mr. Plemel provided background information and reviewed the Staff Report, incorporated into the record, which included code enforcement timelines. He also clarified that should the Commission approve the continued operation of the Tahoe Western Asphalt (TWA) plant under the current Special Use Permit, the operation will not commence without the Nevada Department of Environmental Protection (NDEP) permit, which is currently “under a stop order.” Mr. Plemel outlined three other actions the Commission could take: amend conditions of the Special Use permit; revoke/deny the Special Use Permit; or take other actions (pursuant to Carson City Municipal Code [CCMC] 18.02.090). He also explained the appeal process, noting that the Commission’s decision is final unless TWA (or a representative) appeals the decision to the Board of Supervisors. Mr. Johnson noted that Mr. Plemel had “stated the process correctly” and that he would be available for questions throughout the hearing. Mr. Plemel also responded to the Commissioners’ clarifying questions.

(5:22:33) – TWA representative and attorney Thomas Padian introduced himself and was informed by Chair Borders that the Commission had received the late material provided by his firm. Mr. Padian suggested holding off on the Special Use Permit decision due to a pending appeal that had been filed to appeal the NDEP decision. He also called the complaints “hearsay,” “nameless,” with “no basis” and informed Commissioner Perry that no timeline has been identified by the NDEP and that the plant was currently closed. He also responded to clarifying questions by the Commissioners and confirmed for Chair Borders that the plant is not producing aggregate during the winter. Mr. Padian reiterated his previous comments that the public comments provided by his firm were important as they presented his client’s point of view. Mr. Johnson explained that the appeal of the NDEP decision had been filed in District Court and that litigation had been initiated, adding that there was a five-year limit on such cases. Commissioner Perry believed that the Special Use Permit decision should not wait for the NDEP air quality permit. Commissioner Preston clarified for the new Commissioners that there were “hours and hours” of testimony provided by the residents and ensured Mr. Padian that “they were not nameless.” Commissioner Wiggins also referenced the hundreds of complaints and was not in favor of disregarding their testimony. Chair Borders believed that Conditions 12 and 17 of the Conditions of Approval were violated, adding that the Special Use Permit is the governing document. Commissioner Loyd explained that, as a new Commissioner, she had watched the previous public hearings on the item and assured Mr. Padian that “those people [testifying] were not nameless.” Chair Borders entertained additional comments or questions and when none were forthcoming, a motion.

(5:44:06) – Commissioner Esswein moved to revoke SUP-10-115 based on the evidence of failure to comply with the conditions of the permit and creating a public nuisance that is detrimental to the public health, safety and welfare, including emitting noxious odors into surrounding neighborhoods. The motion was seconded by Commissioner Loyd.

RESULT:	APPROVED (7-0-0)
MOVER:	Esswein
SECONDER:	Loyd
AYES:	Borders, Wiggins, Esswein, Killgore, Loyd, Perry, Preston
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

F. STAFF REPORTS (NON-ACTION ITEMS)

- DIRECTOR'S REPORT TO THE COMMISSION

(5:45:05) – Chairperson Borders introduced the item. Mr. Plemel offered to agendize further discussion on the sign code at a future date. He also announced that the Board of Supervisors had approved the Borda Crossing Tentative Subdivision Map and the Zoning Amendment, based on the Planning Commission’s recommendation, at its February 18, 2021 meeting.

(5:47:08) – Mr. Plemel announced that Todd Reese will be the newly-assigned Deputy District Attorney and will be replacing Mr. Johnson, who also noted that he would still be working on several Title 18 items.

- FUTURE AGENDA ITEMS

(5:46:03) – Mr. Plemel stated that two partial right-of-way abandonments, a Special Use Permit for an auto body repair shop, and a modification to a Special Use Permit at Eagle Valley Middle school will be agendized for the March 31, 2021 regular meeting.

- COMMISSIONER REPORTS/COMMENTS

(5:48:05) – There were no Commissioner reports or comments.

G. PUBLIC COMMENT

(7:48:09) – There were no final public comments.

H. FOR POSSIBLE ACTION: ADJOURNMENT

(5:48:33) – Chairperson Borders adjourned the meeting at 5:48 p.m.

The Minutes of the, February 24, 2021 Carson City Planning Commission meeting are so approved this 31st day of March, 2021.